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Matthew Bender & Company, Inc.
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TITLE 5

CRIMINAL OFFENSES

(CHAPTERS 1-49 IN VOLUME 3A)

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SUBTITLE 5. OFFENSES AGAINST THE ADMINISTRATION OF GOVERNMENT

CHAPTER 52

CORRUPTION IN PUBLIC OFFICE

SECTION.

5-52-101. Abuse of public trust.
5-52-107. Abuse of office.

5-52-101. Abuse of public trust.

(a) A person commits the offense of abuse of public trust if the person:

(1) Solicits, accepts, or agrees to accept on behalf of any person, political party, or other organization any benefit from another person

upon an agreement or understanding that the other person will or may be appointed a public servant or designated or nominated as a candidate for public office;

(2) Offers, confers, or agrees to confer any benefit and the receipt of the benefit is prohibited by this section;

(3) Solicits, accepts, or agrees to accept any benefit as compensation or consideration for having given as a public servant, or as a person elected, appointed, or otherwise designated to become a public servant although not yet occupying that position, a decision, opinion, recommendation, or vote favorable to another person or for having otherwise exercised his or her discretion in favor of another person; or

(4) Offers, confers, or agrees to confer any benefit upon a public servant, or a person elected, appointed, or otherwise designated to become a public servant although not yet occupying that position, and the receipt of the benefit is prohibited by this section.

(b) It is not a defense to a prosecution under this section that the decision, opinion, recommendation, vote, or use of discretion, except for the benefit, was otherwise proper.

(c) Abuse of public trust is a:

(1) Class B felony if the value of the benefit is twenty-five thousand dollars ($25,000) or more;

(2) Class C felony if the value of the benefit is five thousand dollars ($5,000) or more but less than twenty-five thousand dollars ($25,000);

(3) Class D felony if the value of the benefit is five hundred dollars ($500) or more but less than five thousand dollars ($5,000); or

(4) Class A misdemeanor if the value of the benefit is less than five hundred dollars ($500) or the value of the benefit cannot be determined.

History. Acts 1975, No. 280, § 2701; A.S.A. 1947, § 41-2701; Acts 2005, No. 1994, § 328; 2015, No. 1270, § 1; 2017, No. 431, § 1.

Amendments. The 2017 amendment, in (a)(3), substituted "having given as a public servant" for "having as a public servant given" and inserted "or as a person elected, appointed, or otherwise designated to become a public servant although not yet occupying that position"; inserted "or a person elected, appointed, or otherwise designated to become a public servant although not yet occupying that position" in (a)(4); inserted "five hundred dollars ($500) or more but" in (c)(3); and added (c)(4).

5-52-104. Soliciting unlawful compensation.

RESEARCH REFERENCES

ALR. Effect of McDonnell v. U.S. Definition of "Official Act" upon Bribery Prosecution Involving Public Official Under 18 U.S.C. § 201. 32 A.L.R. Fed. 3d Art. 6 (2018).

5-52-107. Abuse of office.

(a) A person commits the offense of abuse of office if, being a public servant, or being a person elected, appointed, or otherwise designated to become a public servant although not yet occupying that position,

and with the purpose of benefiting in a pecuniary fashion or obtaining a sexual favor for himself or herself or another person or of harming another person, the person knowingly:

(1) Commits an unauthorized act which purports to be an act of his or her office; or

(2) Omits to perform a duty imposed on him or her by law or clearly inherent in the nature of his or her office.

(b) Abuse of office is a:

(1) Class B felony if the value of the benefit is twenty-five thousand dollars ($25,000) or more;

(2) Class C felony if the value of the benefit is five thousand dollars ($5,000) or more but less than twenty-five thousand dollars ($25,000);

(3) Class D felony if the value of the benefit is five hundred dollars ($500) or more but less than five thousand dollars ($5,000); or

(4) Class A misdemeanor if the value of the benefit is less than five hundred dollars ($500) or the value of the benefit cannot be determined.

History. Acts 1975, No. 280, § 2707; A.S.A. 1947, § 41-2707; Acts 2017, No. 431, § 2.

Amendments. The 2017 amendment, in (a), inserted "or being a person elected, appointed, or otherwise designated to become a public servant although not yet occupying that position" and "or obtaining a sexual favor for"; deleted "Class B misdemeanor" in the present introductory language of (b); and added (b)(1) through (b)(4).

CHAPTER 53

OFFENSES RELATING TO JUDICIAL AND OTHER OFFICIAL PROCEEDINGS

SUBCHAPTER.

1. General Provisions.

Subchapter 1 — General Provisions

SECTION.

5-53-102. Perjury generally.
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5-53-131. Frivolous, groundless, or malicious prosecutions.
5-53-133. [Repealed.]
5-53-134. Violation of an order of protection.

5-53-102. Perjury generally.

(a) A person commits perjury if in an official proceeding he or she knowingly:

(1) Makes a false material statement under an oath required or authorized by law;

(2) Applies for or submits an absentee ballot for a city, school district, county, state, or federal election knowing that he or she is unlawfully applying for or unlawfully submitting the absentee ballot; or

(3) Makes a false unsworn declaration under the Uniform Unsworn Foreign Declarations Act, § 16-2-201 et seq.

(b) Lack of knowledge of the materiality of the statement is not a defense to a charge of perjury under this section.

(c) Perjury is a Class C felony.

History. Acts 1975, No. 280, § 2602; A.S.A. 1947, § 41-2602; Acts 2015, No. 1166, § 1; 2017, No. 889, § 1.

Amendments. The 2017 amendment added (a)(3).

5-53-103. False swearing generally.

(a) A person commits false swearing if other than in an official proceeding he or she makes a false material statement, knowing it to be false, under an oath required or authorized by law or in an unsworn declaration under the Uniform Unsworn Foreign Declarations Act, § 16-2-201 et seq.

(b) Lack of knowledge of the materiality of the statement is not a defense to a charge of false swearing.

(c) False swearing is a Class A misdemeanor.

History. Acts 1975, No. 280, § 2603; A.S.A. 1947, § 41-2603; Acts 2017, No. 889, § 2.

Amendments. The 2017 amendment added "or in an unsworn declaration under the Uniform Unsworn Foreign Declarations Act, § 16-2-201 et seq." at the end of (a).

5-53-108. Witness bribery.

(a) A person commits witness bribery if he or she:

(1) Offers, confers, or agrees to confer any benefit upon a witness or a person he or she believes may be called as a witness with the purpose of:

(A) Influencing the testimony of that person;

(B) Inducing that person to avoid legal process summoning that person to testify; or

(C) Inducing that person to absent himself or herself from an official proceeding to which that person has been legally summoned; or

(2) Solicits, accepts, or agrees to accept any benefit and the conferring of the benefit is prohibited by this section.

(b) Witness bribery is a Class B felony.

History. Acts 1975, No. 280, § 2608; A.S.A. 1947, § 41-2608; 2019, No. 1017, § 1.

Amendments. The 2019 amendment substituted "Class B felony" for "Class C felony" in (b).

5-53-109. Intimidating a witness.

(a) A person commits the offense of intimidating a witness if he or she threatens a witness or a person he or she believes may be called as a witness with the purpose of:

(1) Influencing the testimony of that person;

(2) Inducing that person to avoid legal process summoning that person to testify; or

(3) Inducing that person to absent himself or herself from an official proceeding to which that person has been legally summoned.

(b) Intimidating a witness is a Class B felony.

History. Acts 1975, No. 280, § 2609; A.S.A. 1947, § 41-2609; Acts 2019, No. 1017, § 2.

Amendments. The 2019 amendment substituted "Class B felony" for "Class C felony" in (b).

5-53-110. Tampering.

(a) A person commits the offense of tampering if, believing that an official proceeding or investigation is pending or about to be instituted, he or she induces or attempts to induce another person to:

(1) Testify or inform falsely;

(2) Withhold any unprivileged testimony, information, document, or thing regardless of the admissibility under the rules of evidence of the testimony, information, document, or thing and notwithstanding the relevance or probative value of the testimony, information, document, or thing to an investigation;

(3) Elude legal process summoning that person to testify or supply evidence, regardless of whether the legal process was lawfully issued; or

(4) Absent himself or herself from any proceeding or investigation to which that person has been summoned.

(b)(1) Tampering under subdivision (a)(1) of this section is a Class D felony.

(2) Otherwise, tampering is a Class A misdemeanor.

History. Acts 1975, No. 280, § 2610; A.S.A. 1947, § 41-2610; Acts 2007, No. 827, § 45; 2019, No. 1017, § 3.

Amendments. The 2019 amendment added (b)(1); redesignated former (b) as (b)(2); added "Otherwise" in (b)(2); and made stylistic changes.

5-53-111. Tampering with physical evidence.

CASE NOTES

Evidence.

Defendant's directed-verdict motion on the tampering with physical evidence charge was inadequate to preserve his challenge to the sufficiency of the evidence as the motion failed to adequately specify any deficiencies in the State's proof. Even had the motion been specific enough, there was sufficient evidence presented to support the conviction because defendant threw the gun in the river after shooting the victim; while defendant claimed that the discharge was accidental and that the disposal was not to impede any investigation or prosecution, the jury was not required to believe his version of events.

Webb v. State, 2019 Ark. App. 436, 587 S.W.3d 252 (2019).

Evidence was sufficient to convict defendant of aggravated robbery and accomplice to tampering with physical evidence because the victim met with defendant, went with defendant to an ATM to withdraw $80 in cash shortly before the altercation between them, was beaten unconscious by defendant, and was found within a few hours severely injured, unconscious, and alone in the parking lot with no money or identification on him; defendant admitted to beating the victim; and defendant admitted knowledge of his girlfriend's having thrown his shoes that had the victim's blood on them in a dumpster. Green v. State, 2020 Ark. App. 320, 601 S.W.3d 463 (2020).

5-53-112. Retaliation against a witness, informant, or juror.

(a) A person commits the offense of retaliation against a witness, informant, or juror if he or she harms or threatens to harm another by any unlawful act in retaliation for anything lawfully done in the capacity of witness, informant, or juror.

(b) Retaliation against a witness, informant, or juror is a Class C felony.

(c) "Informant" means a person who provides information to any law enforcement agency in an effort to assist the law enforcement agency in solving a crime or apprehending a person suspected of a criminal offense.

History. Acts 1975, No. 280, § 2612; A.S.A. 1947, § 41-2612; Acts 1997, No. 1238, § 1; 2005, No. 1994, § 465; 2019, No. 1017, § 4.

Amendments. The 2019 amendment substituted "Class C felony" for "Class D felony" in (b).

5-53-114. Intimidating a juror, a witness, or an informant.

(a) A person commits the offense of intimidating a juror, a witness, or an informant if he or she threatens a juror, a witness, or an informant with the purpose of influencing the juror's vote or decision or the witness's or informant's statement or testimony.

(b) Intimidating a juror, a witness, or an informant is a Class B felony.

(c) "Informant" means a person who provides information to any law enforcement agency in an effort to assist the law enforcement agency in solving crimes and apprehending persons suspected of criminal offenses.

History. Acts 1975, No. 280, § 2614; A.S.A. 1947, § 41-2614; Acts 2005, No. 1994, § 466; 2019, No. 1017, § 5.

Amendments. The 2019 amendment substituted "Class B felony" for "Class C felony" in (b).

5-53-115. Jury tampering.

(a) A person commits the offense of jury tampering if he or she attempts directly or indirectly to communicate with a juror, other than as a part of the official proceedings in which the juror is participating, with the purpose of influencing the juror's vote, decision, or other action as a juror.

(b) Juror tampering is a Class C felony.

History. Acts 1975, No. 280, § 2615; A.S.A. 1947, § 41-2615; Acts 2019, No. 1017, § 6.

Amendments. The 2019 amendment substituted "Class C felony" for "Class D felony" in (b).

5-53-131. Frivolous, groundless, or malicious prosecutions.

(a) Any officer or any person who knowingly brings or aids and encourages another person to bring a frivolous, groundless, or malicious prosecution upon conviction is guilty of a Class A misdemeanor.

(b) Any officer or any person who knowingly brings or aids or encourages another person to bring a frivolous, groundless, or malicious prosecution seeking to subject a person to delayed release under § 5-4-405 upon conviction is guilty of a Class C felony.

History. Acts 1871, No. 31, § 5, p. 96; C. & M. Dig., § 2765; Pope's Dig., § 3470; A.S.A. 1947, § 41-2651; Acts 2005, No. 1994, § 452; 2021, No. 681, § 2.

Amendments. The 2021 amendment, in (a), inserted "person" following "another" and inserted "upon conviction"; and added (b).

5-53-133. [Repealed.]

Publisher's Notes. This section, concerning approaching jury commissioners to influence juror selections, was repealed by Acts 2017, No. 600, § 1. The section was derived from Acts 1941, No. 365, §§ 1-4; 1951, No. 358, §§ 4-6; A.S.A. 1947, §§ 41-2653 — 41-2656; Acts 1995, No. 1296, § 6; 2005, No. 1994, § 425.

5-53-134. Violation of an order of protection.

(a)(1) A person commits the offense of violation of an order of protection if:

(A) A circuit court or other court with competent jurisdiction has issued a temporary order of protection or an order of protection against the person pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et seq.;

(B) The person has received actual notice or notice pursuant to the Arkansas Rules of Civil Procedure of a temporary order of protection or an order of protection pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et seq.; and

(C) The person knowingly violates a condition of an order of protection issued pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et seq.

(2) A person commits the offense of violation of an out-of-state order of protection if:

(A) The court of another state, a federally recognized Indian tribe, or a territory with jurisdiction over the parties and matters has issued a temporary order of protection or an order of protection against the person pursuant to the laws or rules of the other state, federally recognized Indian tribe, or territory;

(B) The person has received actual notice or other lawful notice of a temporary order of protection or an order of protection pursuant to

the laws or rules of the other state, the federally recognized Indian tribe, or the territory;

(C) The person knowingly violates a condition of an order of protection issued pursuant to the laws or rules of the other state, the federally recognized Indian tribe, or the territory; and

(D) The requirements of § 9-15-302 concerning the full faith and credit for an out-of-state order of protection have been met.

(3)(A) A service member commits the offense of violation of a military order of protection if:

(i) The commanding general, a military judge, or a special courts-martial convening authority as authorized by § 12-64-406(b) issues a military order of protection against the service member;

(ii) The service member receives actual notice or other lawful notice of the military order of protection as authorized under United States Department of Defense Instruction 6400.06, as it existed on January 1, 2017; and

(iii) The service member knowingly violates a condition of the military order of protection.

(B) A prosecution against a service member for the offense of violation of a military order of protection does not prohibit the commanding general or military commander who issued the military order of protection from pursuing appropriate disciplinary action against the service member under the Military Code of Arkansas.

(b)(1) Except as provided in subdivision (b)(2) of this section, violation of an order of protection under this section is a Class A misdemeanor.

(2) Violation of an order of protection under this section is a Class D felony if:

(A) The offense is committed within five (5) years of a previous conviction for violation of an order of protection under this section; and

(B) The order of protection was issued after a hearing of which the person received actual notice and at which the person had an opportunity to participate.

(c)(1) A law enforcement officer may arrest and take into custody without a warrant a person whom the law enforcement officer has probable cause to believe:

(A) Is subject to an order of protection issued under the laws of this state; and

(B) Has violated the terms of the order of protection, even if the violation did not take place in the presence of the law enforcement officer.

(2) Under § 9-15-302, a law enforcement officer or law enforcement agency may arrest and take into custody without a warrant a person whom the law enforcement officer or law enforcement agency has probable cause to believe:

(A) Is subject to:

(i) An order of protection issued under the laws or rules of another state, a federally recognized Indian tribe, or a territory; or

(ii) A military order of protection; and

(B) Has violated the terms of the order of protection issued under the laws or rules of the other state, federally recognized Indian tribe, or territory, or the military order of protection, even if the violation did not take place in the presence of the law enforcement officer.

(3)(A) If a service member is in the custody of a law enforcement agency as authorized in subdivision (c)(2) of this section, the law enforcement agency shall notify the office of the Adjutant General of the Arkansas National Guard within twenty-four (24) hours from the time the service member was placed in the custody of the law enforcement agency.

(B)(i) The Arkansas National Guard shall take custody of the service member within forty-eight (48) hours from the time the service member was placed in the custody of the law enforcement agency.

(ii) However, if the Arkansas National Guard does not take custody of the service member as required by subdivision (c)(3)(B)(i) of this section, the law enforcement agency shall release the service member.

(d) It is an affirmative defense to a prosecution under this section if:

(1) The parties have reconciled prior to the violation of the order of protection;

(2) The petitioner for the order of protection:

(A) Invited the defendant to come to the petitioner's residence or place of employment listed in the order of protection; and

(B) Knew that the defendant's presence at the petitioner's residence or place of employment would be in violation of the order of protection;

(3) The petitioner for the order of protection arranged or invited the defendant into meeting at a location or took affirmative steps to communicate with the defendant with the promise that the petitioner would not report the defendant to law enforcement for violating the order of protection; or

(4) The petitioner for the order of protection visited the residence or place of employment of the defendant on his or her own accord and without any threat, duress, or coercion on the part of the defendant.

(e) Any law enforcement officer acting in good faith and exercising due care in making an arrest for domestic abuse in an effort to comply with this subchapter shall have immunity from civil or criminal liability.

(f) As used in this section:

(1) "Military order of protection" means an official command directed at a service member for the purpose of preventing violent and threatening acts against a person who:

(A) Is the current or former spouse of the service member;

(B) Is or was a child, stepchild, parent, stepparent, sibling, guardian, or ward of the service member;

(C) Is residing or cohabitating or in the past has resided or cohabitated with the service member;

(D) Has or had a child in common with the service member;

(E) Is or has been in a dating relationship with the service member as defined by § 9-15-103;

(F) Has had an intimate sexual relationship with the service member; or

(G) Has made allegations against the service member of violations of the punitive article of sexual assault as defined by § 12-64-852; and

(2) "Service member" means a person serving in:

(A) Any branch or reserve component of the United States Armed Forces; or

(B) The National Guard of any state.

History. Acts 1991, No. 267, § 1; 1991, No. 1236, § 1; 2003, No. 651, § 4; 2009, No. 331, § 1; 2011, No. 810, § 1; 2017, No. 515, §§ 1-3; 2019, No. 458, § 1; 2019, No. 905, § 1; 2021, No. 185, § 1.

Amendments. The 2017 amendment added (a)(3); added (c)(2)(A)(ii); in (c)(2)(B), deleted "out-of-state" preceding "order" and inserted "issued under the laws or rules of the other state, federally recognized Indian tribe, or territory, or the military order of protection"; added (c)(3); added (f); and made stylistic changes.

The 2019 amendment by No. 458 deleted (b)(2)(C).

The 2019 amendment by No. 905 deleted "or" following "protection" in (d)(1); and added (d)(3) and (d)(4).

The 2021 amendment, in (f)(1)(G), substituted "assault" for "misconduct" and "§ 12-64-852" for "§ 12-64-845".

CASE NOTES

Evidence Sufficient.

Evidence was sufficient to support defendant's conviction of violation of a protection order based on his "tagging" his children in several Facebook posts; the evidence showed that defendant was an experienced social media user, defendant's daughter testified that defendant had to take affirmative steps in order to tag her and her brother in his posts, the daughter and a detective testified that it would be visibly apparent that defendant was tagging his children in the social media posts, and the detective opined that defendant's actions were an intentional form of communication and not an accident or a mistake. Adams v. State, 2020 Ark. App. 107, 594 S.W.3d 884 (2020).

Subchapter 2 — Threatening a Judicial Official or Juror

5-53-202. Threatening a judicial official or juror — Penalty.

CASE NOTES

Sentence.

Because defendant received 40 years on each count of threatening a judicial officer, as enhanced under § 5-4-501, his sentence was above the statutory range and therefore illegal. Radford v. State, 2018 Ark. App. 89, 538 S.W.3d 894 (2018).

CHAPTER 54

OBSTRUCTING GOVERNMENTAL OPERATIONS

SUBCHAPTER.

1. General Provisions.
2. Terrorism.

Subchapter 1 — General Provisions

SECTION.

5-54-101. Definitions.
5-54-110. First degree escape.
5-54-111. Second degree escape.
5-54-112. Third degree escape.
5-54-119. Furnishing, possessing, or using prohibited articles — Delivering a prohibited article.
5-54-120. Failure to appear.
5-54-122. Filing false report with law enforcement agency.
5-54-125. Fleeing.
5-54-131. Absconding.
5-54-133. Improper use of or altering the state seal.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

5-54-101. Definitions.

As used in this subchapter:

(1) "Arkansas State Hospital" includes any subdivision or facility of the Arkansas State Hospital and any other hospital established by law or legally designated for similar purposes;

(2)(A) "Correctional facility" means any place used for the confinement of persons charged with or convicted of an offense or otherwise confined under a court order.

(B) "Correctional facility" does not include youth services programs and applies to the Arkansas State Hospital only as to persons detained there charged with or convicted of an offense;

(3)(A) "Custody" means actual or constructive restraint by a law enforcement officer pursuant to an arrest or a court order.

(B) "Custody" does not include detention in a correctional facility, youth services program, or the Arkansas State Hospital;

(4) "Deadly physical force" means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury;

(5) "Escape" means the unauthorized departure of a person from custody or a correctional facility;

(6) "Governmental function" means any activity that a public servant is legally authorized to undertake on behalf of any governmental unit he or she serves;

(7) "Implement for escape" means any weapon, tool, or other thing that may be useful for escape;

(8) "Implement for unauthorized departure" means any weapon, tool, or other thing that may be useful for unauthorized departure;

(9) "Juvenile detention facility" means any facility for the temporary care of juveniles alleged to be delinquent, or adjudicated delinquent and awaiting disposition, who require secure custody in a physically restricting facility designed and operated with all entrances and exits under the exclusive control of the facility's staff, so that a juvenile may not leave the facility unsupervised or without permission;

(10) "Physical force" means any bodily impact, restraint, or confinement or the threat of bodily impact, restraint, or confinement;

(11) "Prohibited article" means:

(A) An intoxicating beverage other than sacramental wine labeled as sacramental wine and supplied by a religious official who supplies the sacramental wine to an inmate in the Division of Correction or Division of Community Correction for the sole purpose of an approved religious service, pursuant to rules promulgated by the Board of Corrections;

(B) A controlled substance, as defined by §§ 5-64-101 et seq. — 5-64-601 et seq., not prescribed by a physician for the benefit of the person to whom it is delivered;

(C) A weapon, including a firearm or anything manifestly designed, made, adapted, or capable of being adapted to inflict physical injury, and anything that in the manner of its use or intended use is capable of causing physical injury; or

(D) Anything furnished an inmate in a correctional facility, the Arkansas State Hospital, or juvenile training school without authorization of a person charged with the duty of maintaining the safety or security of the institution or any person confined in the institution;

(12) "Public record" includes all official books, papers, exhibits, or records of any type required by law to be created by or received and retained in any governmental office or agency, affording notice or information to the public or constituting a memorial of an act or transaction of a public office or public servant; and

(13)(A) "Youth services program" means a residential program operated by the Division of Youth Services of the Department of Human Services or its contractor for the purpose of detaining, housing, and treating persons committed to the Division of Youth Services.

(B) A person committed to the Division of Youth Services and placed in a youth services program is in the custody of the youth

services program while attending or participating in any activity conducted or arranged by the youth services program, regardless of the physical location of the activity.

History. Acts 1975, No. 280, § 2801; 1977, No. 360, § 13; A.S.A. 1947, § 41-2801; Acts 1988 (4th Ex. Sess.), No. 8, § 1; 1988 (4th Ex. Sess.), No. 23, § 1; 1997, No. 1229, §§ 1, 2; 1997, No. 1299, §§ 1, 2; 2005, No. 1994, § 253; 2019, No. 315, § 150; 2019, No. 910, § 675.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (11)(A).

The 2019 by No. 910 substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" in (11)(A).

5-54-102. Obstructing governmental operations.

CASE NOTES

Evidence Held Sufficient.

Evidence was sufficient to show that defendant knowingly interfered with governmental operations given the officers' testimony that defendant continued to honk her horn while one officer tried to talk to her to explain their presence. Gordin v. State, 2021 Ark. App. 96 (2021).

5-54-103. Resisting arrest — Refusal to submit to arrest.

CASE NOTES

Evidence.

Trial court's revocation of defendant's suspended imposition of sentence for committing the offense of resisting arrest was not clearly against a preponderance of the evidence because, in describing defendant's resistance to the officers' efforts to arrest her, a corporal stated that defendant was wiggling around, pulling against him, not cooperating, and trying to get up and get out of the officers' grasp; he testified that he and another officer had to take defendant to the ground to get handcuffs on her; and defendant threatened to use physical force against the corporal when she said that she was going to beat him up and that she would make sure that he got to hell. Jennings v. State, 2019 Ark. App. 258, 576 S.W.3d 517 (2019).

Evidence was sufficient to convict defendant of resisting arrest, where he refused to submit and engaged in an extended struggle with the trooper who arrested him, and the struggle was apparently physical enough to break the trooper's microphone clip off his utility belt. Hooten v. State, 2019 Ark. App. 519, 588 S.W.3d 829 (2019).

Evidence was sufficient to sustain the conviction for refusal to submit to arrest where the officers' testimony established that defendant knew that she had been arrested, although she did not know why, and she clung to the steering wheel and used her body weight to try to stay in the car. Gordin v. State, 2021 Ark. App. 96 (2021).

5-54-105. Hindering apprehension or prosecution.

CASE NOTES

Evidence.

Evidence was sufficient to show that defendant hindered apprehension where there was repeated testimony that the officers were in uniform, and the armored vehicle had its blue lights on, and one officer testified that defendant continuously honked the horn from the time she pulled into the driveway and even while he was trying to explain the situation to

her. Gordin v. State, 2021 Ark. App. 96 (2021).

5-54-109. Refusing to assist law enforcement officer.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Breanna Trombley, Note: Criminal Law — No Stitches for Snitches: The Need for a Duty-to-Report Law in Arkansas, 34 U. Ark. Little Rock L. Rev. 813 (2012).

5-54-110. First degree escape.

(a) A person commits the offense of first degree escape if:

(1) At any time, including from the point of departure from confinement to the return to confinement, aided by another person actually present, he or she uses or threatens to use physical force in escaping from:

(A) Custody;

(B) A correctional facility;

(C) A juvenile detention facility; or

(D) A youth services program; or

(2) At any time, including from the point of departure from confinement to the return to confinement, he or she uses or threatens to use a deadly weapon in escaping from:

(A) Custody;

(B) A correctional facility;

(C) A juvenile detention facility; or

(D) A youth services program.

(b)(1) First degree escape is a Class A felony if, at the time of the escape, the person is in the custody of:

(A) The Division of Correction;

(B) The Division of Community Correction; or

(C) A law enforcement agency.

(2) Otherwise first degree escape is a Class C felony.

History. Acts 1975, No. 280, § 2810; A.S.A. 1947, § 41-2810; Acts 1997, No. 1229, § 3; 1997, No. 1299, § 3; 2003, No. 1348, § 1; 2005, No. 1994, § 254; 2009, No. 478, § 1; 2019, No. 910, § 676.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (b)(1)(A), and "Division of Community Correction" for "Department of Community Correction" in (b)(1)(B).

5-54-111. Second degree escape.

(a) A person commits the offense of second degree escape if he or she:

(1) At any time, including from the point of departure from confinement to the return to confinement, uses or threatens to use physical force in escaping from custody;

(2) Having been found guilty of a felony, escapes from custody;

(3) Escapes from a correctional facility;

(4) Escapes from a juvenile detention facility; or

(5) Escapes from a youth services program.

(b)(1) Second degree escape is a Class B felony if, at the time of the escape, the person is in the custody of:

(A) The Division of Correction;

(B) The Division of Community Correction; or

(C) A law enforcement agency.

(2) Otherwise second degree escape is a Class D felony.

History. Acts 1975, No. 280, § 2811; A.S.A. 1947, § 41-2811; Acts 1997, No. 1229, § 4; 1997, No. 1299, § 4; 2003, No. 1348, § 2; 2005, No. 1994, § 255; 2009, No. 478, § 2; 2019, No. 910, § 677.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (b)(1)(A), and "Division of Community Correction" for "Department of Community Correction" in (b)(1)(B).

RESEARCH REFERENCES

Ark. L. Rev. Rachel A. Orr, Recent Developments: Arkansas Supreme Court Defines "In Custody" Element of Second-Degree Escape Charge, 65 Ark. L. Rev. 163 (2012).

5-54-112. Third degree escape.

(a) A person commits the offense of third degree escape if he or she escapes from custody.

(b) It is a defense to a prosecution under this section that the person escaping was in custody pursuant to an unlawful arrest.

(c)(1) Third degree escape is a Class C felony if, at the time of the escape, the person is in the custody of:

(A) The Division of Correction;

(B) The Division of Community Correction; or

(C) A law enforcement agency.

(2) Otherwise third degree escape is a Class A misdemeanor.

History. Acts 1975, No. 280, § 2812; A.S.A. 1947, § 41-2812; Acts 2009, No. 478, § 3; 2019, No. 910, § 678.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (c)(1)(A), and "Division of Community Correction" for "Department of Community Correction" in (c)(1)(B).

CASE NOTES

Evidence.

Defendant was properly convicted of third-degree escape because at the time of his transport to a medical center for treatment, defendant was already under arrest; thus, defendant's escape attempt while a deputy was in the process of restraining him for transportation back to jail met the definition of "custody" under § 5-54-101. Because the deputy worked as a sheriff at the county sheriff's office at the time of defendant's escape, the felony charge was appropriate. Renninger v. State, 2021 Ark. App. 52, 615 S.W.3d 777 (2021).

5-54-119. Furnishing, possessing, or using prohibited articles — Delivering a prohibited article.

(a) A person commits the offense of furnishing a prohibited article if he or she knowingly:

(1) Introduces a prohibited article into a correctional facility, the Arkansas State Hospital, or a youth services program; or

(2) Provides a person confined in a correctional facility, the Arkansas State Hospital, or a youth services program with a prohibited article.

(b)(1)(A) Furnishing or providing a weapon, intoxicating beverage, controlled substance, moneys, a cellular telephone or other communication device, the components of a cellular telephone or other communication device, or any other items that would facilitate an escape, engaging in a continuing criminal enterprise, § 5-64-405, or violence within a facility is a Class B felony.

(B) Otherwise, furnishing a prohibited article is a Class C felony.

(2) This section does not apply to a religious official who supplies sacramental wine labeled as sacramental wine to an inmate in the Division of Correction for the sole purpose of an approved religious service, pursuant to rules promulgated by the Board of Corrections.

(c)(1) A person commits possessing a prohibited article if, being an inmate of a correctional facility or in the custody of a correctional facility, the person knowingly possesses a:

(A) Cellular telephone or other communication device;

(B) Component of a cellular telephone or other communication device; or

(C) Controlled substance.

(2) Possessing a prohibited article is a Class B felony.

(d)(1) A person commits using a prohibited article if, being an inmate of a correctional facility or in the custody of a correctional facility, the person knowingly uses a cellular telephone or other communication device to commit or to attempt, conspire, or solicit to commit:

(A) An escape from the custody of the correctional facility;

(B) Engaging in a continuing criminal enterprise, § 5-64-405; or

(C) A violent felony as defined at § 5-4-501(d)(2).

(2) Using a prohibited article is a Class A felony.

(e)(1) A person commits the offense of delivering a prohibited article if, being an inmate of a correctional facility or in the custody of a correctional facility, the person knowingly delivers a controlled substance to another person.

(2)(A) Delivering a prohibited article is a Class A felony if the controlled substance through its use causes the death of or serious bodily injury to another person.

(B) Otherwise, delivering a prohibited article is a Class B felony.

(f) A person may not be convicted of furnishing, possessing, or delivering a prohibited article if the prohibited article is a controlled substance and the person has been charged with, tried for, or convicted of a possession or delivery offense under § 5-64-401 et seq., that arises out of the same set of facts.

History. Acts 1975, No. 280, § 2819; 1977, No. 360, § 17; 1985, No. 686, § 1; A.S.A. 1947, § 41-2819; Acts 1988 (4th Ex. Sess.), No. 8, § 2; 1988 (4th Ex. Sess.), No. 23, § 2; 2005, No. 168, § 1; 2005, No. 1994, § 258; 2009, No. 479, § 1; 2013, No. 129, § 1; 2019, No. 315, § 151; 2019, No. 672, § 1.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (b)(2).

The 2019 amendment by No. 672 added "Delivering a prohibited article" in the section heading; substituted "Division" for "Department" in (b)(2); and added (c)(1)(C), (e) and (f).

5-54-120. Failure to appear.

(a) As used in this section, "pending charge" means a charge that results from an arrest or issuance of a citation or criminal summons, or after the filing of a criminal information or indictment and that has not been resolved by acquittal, conviction, dismissal, or nolle prosequi.

(b) A person commits the offense of failure to appear if he or she fails to appear without reasonable excuse subsequent to having been:

(1) Cited or summonsed as an accused; or

(2) Lawfully set at liberty upon condition that he or she appear at a specified time, place, and court.

(c) Failure to appear is a:

(1) Class C felony if the required appearance was in regard to a pending charge or disposition of a felony charge either before or after a determination of guilt of the felony charge;

(2) Class D felony if the required appearance was in regard to an order to appear issued before a revocation hearing under § 16-93-307 and the defendant was placed on probation or received a suspended sentence for a felony offense;

(3) Class A misdemeanor if the required appearance was in regard to a pending charge or disposition of a Class A misdemeanor charge either before or after a determination of guilt of the Class A misdemeanor charge;

(4) Class B misdemeanor if the required appearance was in regard to a pending charge or disposition of a Class B misdemeanor charge either before or after a determination of guilt of the Class B misdemeanor charge;

(5) Class B misdemeanor if the required appearance was in regard to a pending charge or disposition of a Class C misdemeanor charge either before or after a determination of guilt of the Class C misdemeanor charge;

(6) Unclassified misdemeanor with the same penalty as the unclassified misdemeanor in the pending charge or disposition if the required appearance was in regard to a pending charge or disposition of an unclassified misdemeanor either before or after a determination of guilt on the unclassified misdemeanor charge; and

(7) Class C misdemeanor if the required appearance was in regard to a pending charge or disposition of a violation either before or after a determination of guilt of the violation charge.

(d) This section does not apply to an order to appear imposed as a condition of suspension or probation under § 5-4-303.

History. Acts 1975, No. 280, § 2820; A.S.A. 1947, § 41-2820; Acts 1991, No. 916, § 1; 2011, No. 514, § 1; 2011, No. 570, § 32; 2013, No. 1193, § 1; 2015, No. 538, § 1; 2015, No. 1155, § 9; 2019, No. 322, § 1.

Amendments. The 2019 amendment inserted "or issuance of a citation or criminal summons" in (a).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Jessie Wallace Burchfield, A Ticket to Jail: Do Minor Traffic Violations Result in Jail Time for Poor Arkansans?, 42 U. Ark. Little Rock L. Rev. 371 (2020).

Judge Victor A. Fleming, DisAPPEARing Act: Arkansas's Circularly-Defined Default, 42 U. Ark. Little Rock L. Rev. 405 (2020).

CASE NOTES

Evidence.

Evidence that, in a pretrial-release order, defendant was ordered to appear in the district court on a specified date, defendant failed to appear in court on that date, and the jury heard testimony that defendant had been arrested on suspicion of DUI was clearly sufficient to support defendant's conviction for failure to appear. Reese v. State, 2018 Ark. App. 336, 552 S.W.3d 47 (2018).

Jury had substantial evidence to support defendant's conviction on two counts of failure to appear because defendant admitted and the State introduced documentary proof that defendant signed circuit court orders directing defendant to appear in court on separate dates and it was undisputed that he failed to appear for the court dates. The jury had the opportunity to weigh defendant's testimony that he did not appear for court as ordered because he was not given copies of the orders and forgot the dates. Hyatt v. State, 2020 Ark. App. 390, 607 S.W.3d 180 (2020).

5-54-122. Filing false report with law enforcement agency.

(a) As used in this section, "report" means any communication, either written or oral, sworn or unsworn.

(b) A person commits the offense of filing a false report if he or she files a report with any law enforcement agency or prosecuting attorney's office of any alleged criminal wrongdoing on the part of another person knowing that the report is false.

(c)(1) Filing a false report is a Class D felony if:

(A) The alleged criminal wrongdoing is a capital offense, Class Y felony, Class A felony, or Class B felony;

(B) The law enforcement agency or prosecuting attorney's office to whom the false report is made has expended in excess of five hundred dollars ($500) in order to investigate the false report, including the costs of labor;

(C) Physical injury results to any person as a result of the false report;

(D) The false report is made in an effort by the person filing the false report to conceal his or her own criminal activity;

(E) The false report results in another person being arrested; or

(F) The false report alleges another person purposely selected the victim of a crime because the victim was a member of or was

associated with a recognizable and identifiable group or class who share mental, physical, biological, cultural, political, or religious beliefs or characteristics, for the purpose of delayed release under § 5-4-405.

(2) Otherwise, filing a false report is a Class A misdemeanor.

History. Acts 1989, No. 690, §§ 1-3; 2007, No. 827, § 46; 2021, No. 681, § 3.

Amendments. The 2021 amendment added (c)(1)(F).

CASE NOTES

Evidence.

Court of Appeals affirmed defendant's conviction for filing a false police report because the circuit court found that defendant knowingly filed a false report on the basis of its credibility determination, and the Court of Appeals was not at liberty to disturb the circuit court's credibility determinations on appeal; the circuit court listened to defendant's recording and a state senator's recording, watched and listened to the recording from the police department, and observed the testimony of the witnesses. Ferry v. State, 2021 Ark. App. 34, 617 S.W.3d 295 (2021).

5-54-125. Fleeing.

(a) If a person knows that his or her immediate arrest or detention is being attempted by a duly authorized law enforcement officer, it is the lawful duty of the person to refrain from fleeing, either on foot or by means of any vehicle or conveyance.

(b) Fleeing is a separate offense and is not considered a lesser included offense or component offense with relation to other offenses which may occur simultaneously with the fleeing.

(c) Fleeing on foot is considered a Class C misdemeanor, except under the following conditions:

(1) If the defendant has been previously convicted of fleeing on foot anytime within the past one-year period, a subsequent fleeing on foot offense is a Class B misdemeanor;

(2) If property damage occurs as a direct result of the fleeing on foot, the fleeing on foot offense is a Class A misdemeanor; or

(3) If serious physical injury occurs to any person as a direct result of the fleeing on foot, the fleeing on foot offense is a Class D felony.

(d)(1)(A) Fleeing by means of any vehicle or conveyance is considered a Class A misdemeanor.

(B) A person convicted under subdivision (d)(1)(A) of this section shall serve a minimum of two (2) days in jail.

(C) A person convicted under subdivision (d)(1)(A) of this section who operated the vehicle or conveyance in excess of the posted speed limit shall serve a minimum of thirty (30) days in jail.

(2) Fleeing by means of any vehicle or conveyance is considered a Class C felony if, under circumstances manifesting extreme indifference to the value of human life, a person purposely operates the vehicle or conveyance in such a manner that creates a substantial danger of death or serious physical injury to another person.

(3) If serious physical injury to any person occurs as a direct result of fleeing by means of any vehicle or conveyance, the fleeing by means of any vehicle or conveyance offense is a Class B felony.

(e) In addition to any other penalty, if the defendant is convicted of violating subsection (d) of this section, the court shall instruct the Office of Driver Services of the Department of Finance and Administration to suspend or revoke the defendant's driver's license for at least six (6) months but not more than one (1) year.

History. Acts 1977, No. 196, §§ 1, 2; A.S.A. 1947, §§ 41-2822, 41-2823; Acts 1993, No. 1217, § 1; 1995, No. 410, § 1; 2009, No. 1304, § 1; 2017, No. 887, § 1; 2021, No. 722, § 1.

Amendments. The 2017 amendment deleted former (e), and redesignated former (f) as present (e).

The 2021 amendment added (d)(1)(C); substituted "Class C" for "Class D" in (d)(2); and substituted "Class B" for "Class C" in (d)(3).

CASE NOTES

Evidence.

There was substantial evidence to support a conviction for Class D felony vehicular fleeing, as the evidence showed that the road conditions were dangerous due to heavy rain, defendant traveled at such a high rate of speed that officers had to call off the pursuit because it was unsafe, and several cars had to pull over to avoid being hit, supporting a determination that defendant operated his vehicle in a manner that created a substantial danger of death or serious physical injury to others. Donaldson v. State, 2016 Ark. App. 391, 500 S.W.3d 768 (2016).

Fleeing for 22 miles at speeds of 115 miles an hour, passing cars on the shoulder of the interstate, stopping only because state police placed spike strips over the interstate, fleeing for two more miles on deflated tires, crashing to a stop off the road, and running away from police into the woods constituted substantial evidence supporting defendant's fleeing conviction under subdivision (d)(2) of this section. Hernandez-Diaz v. State, 2019 Ark. App. 301, 577 S.W.3d 757 (2019).

Even assuming the witness was an accomplice, there was independent evidence tending to connect defendant with attempted capital murder, unlawful discharge of a firearm from a vehicle, and fleeing, as his letters and call to the witness were consistent with testimony that defendant was the shooter, and the jury could have found that defendant's alleged actions in firing the assault rifle at the officer and telling the driver to go aided and encouraged the driver in fleeing from the officer. Farmer v. State, 2019 Ark. App. 331, 580 S.W.3d 879 (2019).

Evidence was sufficient to convict defendant of felony vehicular fleeing as she drove the vehicle in a manner that manifested extreme indifference to the value of human life because she fled in a vehicle, drove in excess of the speed limit, and ran two separate four-way stops while being pursued by a marked patrol car running both lights and a siren; and she narrowly missed other vehicles, including a van with children inside. Overton v. State, 2020 Ark. App. 259, 600 S.W.3d 636 (2020).

Cited: Flemons v. State, 2016 Ark. 460, 505 S.W.3d 196 (2016).

5-54-131. Absconding.

(a) A person commits the offense of absconding if the person knowingly:

(1) Leaves a designated residence while under house arrest ordered as a condition of the person's release on a criminal offense by a court of competent jurisdiction;

(2) Leaves a designated area while wearing an electronic monitoring device ordered as a condition of the person's release on a criminal offense by a:

(A) Court of competent jurisdiction; or

(B)(i) Sheriff or his or her designee.

(ii) A determination by a sheriff or his or her designee placing a person on electronic monitoring remains valid until changed by the sheriff or his or her designee; or

(3) Fails to abide by the terms of his or her sentence or conditions imposed under § 16-90-122 concerning his or her release pending bed space at the Division of Correction or the Division of Community Correction by not reporting to a designated place or at a designated time in order to submit himself or herself to the custody of the Division of Correction or the Division of Community Correction to serve a period of incarceration he or she was previously ordered by a court to serve.

(b) The offense of absconding is a Class D felony.

History. Acts 1993, No. 473, § 1; 1999, No. 755, § 1; 2019, No. 505, § 1.

Amendments. The 2019 amendment added (a)(3).

5-54-133. Improper use of or altering the state seal.

(a) As used in this section, "state seal" means the Seal of the State of Arkansas described in § 1-4-108(a).

(b) A person commits improper use of or altering the state seal if the person knowingly uses the state seal or an altered version of the state seal in a private, nongovernmental written communication to another person with the purpose to injure, defraud, harass, intimidate, or coerce the other person, and the actor:

(1) Assumes a false identity;

(2) Pretends to be a representative of a state or local agency;

(3) Pretends to be an officer or employee of the government; or

(4) Attempts to collect a debt the actor contends is owed to the actor or another person or organization.

(c) Improper use of or altering the state seal is a Class A misdemeanor.

(d) A prosecution under this section does not preclude a prosecution or civil action under § 4-88-101 et seq.

History. Acts 2017, No. 590, § 1.

Subchapter 2 — Terrorism

SECTION.

5-54-201. Definitions.
5-54-209. Use of a hoax substance or hoax bomb.

RESEARCH REFERENCES

ALR. Justice Against Sponsors of Terrorism Act ("JASTA"), Pub. L. No. 114-222, 130 Stat. 852 (2016) (Codified at 28 U.S.C. § 1605B). 31 A.L.R. Fed. 3d Art. 4 (2018).

5-54-201. Definitions.

As used in this subchapter:

(1) "Act of terrorism" means:

(A) Any act that causes or creates a risk of death or serious physical injury to five (5) or more persons;

(B) Any act that disables or destroys the usefulness or operation of any communications system;

(C) Any act or any series of two (2) or more acts committed in furtherance of a single intention, scheme, or design that disables or destroys the usefulness or operation of a computer network, computers, computer programs, or data used by:

(i) Any industry;

(ii) Any class of business;

(iii) Five (5) or more businesses;

(iv) The United States Government;

(v) State government;

(vi) Any unit of local government;

(vii) A public utility;

(viii) A manufacturer of pharmaceuticals;

(ix) A national defense contractor; or

(x) A manufacturer of chemical or biological products used in connection with agricultural production;

(D) Any act that disables or causes substantial damage to or destruction of any structure or facility used in or in connection with:

(i) Ground, air, or water transportation;

(ii) The production or distribution of electricity, gas, oil, or other fuel;

(iii) The treatment of sewage or the treatment or distribution of water; or

(iv) Controlling the flow of any body of water;

(E) Any act that causes substantial damage to or destruction of livestock or crops or a series of two (2) or more acts committed in furtherance of a single intention, scheme, or design which, in the aggregate, causes substantial damage to or destruction of livestock or crops;

(F) Any act that causes substantial damage to or destruction of:

(i) Any hospital; or

(ii) Any building, facility, or monument used, owned, or maintained by:

(a) The United States Government;

(b) State government;

(c) Any unit of local government;

(d) A national defense contractor;

(e) A public utility; or

(f) A manufacturer of chemical or biological products used in or in connection with agricultural production or the storage or processing of agricultural products or the preparation of agricultural products for food or food products intended for resale or for feed for livestock; or

(G) Any act that causes damage of five hundred thousand dollars ($500,000) or more to any building or set of buildings;

(2) "Agricultural production" means the breeding and growing of livestock and crops;

(3) "Agricultural products" means crops and livestock;

(4) "Biological products used in agriculture" means, but is not limited to, seeds, plants, and deoxyribonucleic acid (DNA) of plants or animals altered for use in crop or livestock breeding or production or which are sold, intended, designed, or produced for use in crop production;

(5) "Communications system" means any works, property, or material of any radio, telegraph, telephone, microwave, cable station, or system;

(6)(A) "Computer" means a device that accepts, processes, stores, retrieves, or outputs data.

(B) "Computer" includes, but is not limited to, auxiliary storage and telecommunications devices;

(7) "Computer network" means a set of related, remotely connected devices and any communications facilities including more than one (1) computer with the capability to transmit data among them through communication facilities;

(8) "Computer program" means a series of coded instructions or statements in a form acceptable to a computer that causes the computer to process data and supply the results of data processing;

(9)(A) "Data" means representations of information, knowledge, facts, concepts, or instructions, including program documentation, which are prepared in a formalized manner and are stored or processed in or transmitted by a computer.

(B) Data may be stored in any form including, but not limited to, magnetic or optical storage media, punch cards, or data stored internally in the memory of a computer;

(10) "Explosive or incendiary device" means the same as defined in § 5-71-301;

(11) "Hoax bomb" means a device designed to look like an explosive or incendiary device;

(12) "Hoax substance" means any substance that would cause a reasonable person to believe that the substance is a:

(A) Dangerous chemical or biological agent;

(B) Poison;

(C) Harmful radioactive substance; or

(D) Similar substance;

(13) "Livestock" means animals bred or raised for human consumption;

(14) "Material support or resources" means:

(A) Currency or other financial securities;

(B) Financial services;

(C) Lodging;

(D) Training;

(E) Safe house;

(F) False documentation or identification;

(G) Communications equipment;

(H) Facilities;

(I) Weapons;

(J) Lethal substances;

(K) Explosives;

(L) Personnel;

(M) Transportation;

(N) Expert services or expert assistance; and

(O) Any other kind of physical assets or intangible property;

(15)(A) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.

(B) "Person" includes, without limitation, any:

(i) Charitable organization, whether incorporated or unincorporated;

(ii) Professional fund raiser, professional solicitor, limited liability company, association, joint stock company, trust, trustee, or any group of people formally or informally affiliated or associated for a common purpose; and

(iii) Officer, director, partner, member, or agent of any person;

(16) "Render criminal assistance" means to do any of the following with the purpose of preventing, hindering, or delaying the discovery or apprehension of a person whom he or she knows or believes has committed an offense under this subchapter or is being sought by law enforcement officials for the commission of an offense under this subchapter, or with the purpose to assist a person in profiting or benefiting from the commission of an offense under this subchapter:

(A) Harbor or conceal the person;

(B) Warn the person of impending discovery or apprehension;

(C) Provide the person with:

(i) Money;

(ii) Transportation;

(iii) A weapon;

(iv) A disguise;

(v) False identification documents; or

(vi) Any other means of avoiding discovery or apprehension;

(D) Prevent or obstruct, by means of force, intimidation, or deception, anyone from performing an act that might aid in the discovery or apprehension of the person;

(E) Suppress, by any act of concealment, alteration, or destruction, any physical evidence that might aid in the discovery or apprehen-

sion of the person or in the lodging of a criminal charge against the person;

(F) Aid the person to protect or expeditiously profit from an advantage derived from the crime; or

(G)(i) Provide expert services or expert assistance to the person.

(ii) Providing expert services or expert assistance shall not be construed to apply to:

(a) A licensed attorney who discusses with a client the legal consequences of a proposed course of conduct or advises a client of legal or constitutional rights; or

(b) A licensed medical worker who provides emergency medical treatment to a person whom the licensed medical worker believes committed an offense under this subchapter if, as soon as reasonably practicable either before or after providing the medical treatment, the licensed medical worker notifies a law enforcement agency; and

(17) "Terrorist" means any person who engages in or is about to engage in a terrorist act with the purpose to intimidate or coerce a significant portion of the civilian population or influence the policy of a government or a unit of government.

History. Acts 2003, No. 1342, § 3; 2007, No. 827, §§ 47, 48; 2021, No. 351, § 1; 2021, No. 1014, § 6.

Amendments. The 2021 amendment by No. 351 added the definitions for "Explosive or incendiary device" and "Hoax bomb".

The 2021 amendment by No. 1014 substituted "facility, or monument used, owned, or maintained" for "or facility used" in (1)(F)(ii).

5-54-209. Use of a hoax substance or hoax bomb.

(a) A person commits the offense of use of a hoax substance or hoax bomb if the person knowingly delivers or causes the delivery of a hoax substance or hoax bomb to a governmental facility, school, business, hospital, office building, or similar facility open to the public, or to a person's home, business, or place of work with the purpose of causing anxiety, unrest, fear, personal discomfort, or the evacuation of the facility.

(b) Use of a hoax substance or hoax bomb is a Class C felony.

History. Acts 2003, No. 1342, § 3; 2021, No. 351, § 2.

Amendments. The 2021 amendment added "or hoax bomb" in the section heading and throughout the section; and substituted "Class C" for "Class D" in (b).

CHAPTER 55

FRAUD AGAINST THE GOVERNMENT

SUBCHAPTER.

1. Medicaid Fraud Act.
2. Illegal Food Coupons.
6. Election, Petition, and Ballot Fraud.

Subchapter 1 — Medicaid Fraud Act

SECTION.
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5-55-102. Definitions.

As used in this subchapter:

(1) "Arkansas Medicaid Program" means the program authorized under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., that provides for payments for medical goods or services on behalf of indigent families with dependent children and of aged, blind, or disabled individuals whose income and resources are insufficient to meet the cost of necessary medical services, including all transactions through the actual delivery of healthcare goods or services to a Medicaid recipient regardless of whether the healthcare goods or services are paid for directly by the Department of Human Services or indirectly through a fiscal agent, contractor, subcontractor, risk-based provider organization, managed care organization, or individual;

(2) "Claim" means any written or electronically submitted request or demand for reimbursement or payment made by any Medicaid provider to the Arkansas Medicaid Program, a managed care organization, or any fiscal agent of the Arkansas Medicaid Program or a managed care organization for each good or service purported to have been provided to any Medicaid recipient and all documentation required to be created or maintained by law or rule to justify, support, approve, or document the delivery of healthcare goods or services to a Medicaid recipient as a condition of participation in the Arkansas Medicaid Program as mandated by the Arkansas Medicaid Program provider agreement, rules, or managed care contract;

(3) "Fiscal agent" means any individual, firm, corporation, professional association, partnership, organization, risk-based provider organization, managed care organization, or other legal entity that receives, processes, or pays claims for the delivery of healthcare goods or services to Medicaid recipients under the Arkansas Medicaid Program;

(4)(A) "Illegal Medicaid participation" means participation in the Arkansas Medicaid Program when the individual or organization is suspended from the Arkansas Medicaid Program or on a state or federal excluded Medicaid provider list.

(B) "Illegal Medicaid participation" includes without limitation when a suspended or excluded individual or organization:

(i) Is employed or contracting with a Medicaid provider or managed care organization or otherwise associated with a Medicaid

provider or managed care organization for the purpose of providing or supervising the provision of goods and services to Medicaid recipients;

(ii) Plays any role in the management of a Medicaid provider directly as a manager or management company or indirectly as a consultant or advisor; or

(iii) Receives payment for administrative and management services directly or indirectly related to patient care such as processing Medicaid claims for payment, attending to services that assist or support Medicaid recipients, or acting as a Medicaid consultant or advisor;

(5) "Managed care organization" means a health insurer, Medicaid provider, or other business entity authorized by state law or through a contract with the state to receive a fixed or capitated rate or fee to manage all or a portion of the delivery of healthcare goods or services to Medicaid recipients;

(6)(A) "Medicaid provider" means a person, business organization, risk-based provider organization, or managed care organization that delivers, purports to deliver, or arranges for the delivery of healthcare goods or services to a Medicaid recipient under the Arkansas Medicaid Program.

(B) "Medicaid provider" includes an employee, agent, representative, contractor, or subcontractor of a person, business organization, risk-based provider organization, or managed care organization;

(7) "Medicaid recipient" means any individual in whose behalf any person claimed or received any payment from the Arkansas Medicaid Program or its fiscal agents, whether or not the individual was eligible for benefits under the Arkansas Medicaid Program;

(8) "Person" means any:

(A) Medicaid provider of goods or services under the Arkansas Medicaid Program or any employee of the Medicaid provider, independent contractor of the Medicaid provider, contractor of the Medicaid provider, or subcontractor of the Medicaid provider, whether the Medicaid provider be an individual, individual medical vendor, firm, corporation, professional association, partnership, organization, risk-based provider organization, managed care organization, or other legal entity; or

(B) Individual, individual medical vendor, firm, corporation, professional association, partnership, organization, risk-based provider organization, managed care organization, or other legal entity, or any employee of any individual, individual medical vendor, firm, corporation, professional association, partnership, organization, risk-based provider organization, managed care organization, or other legal entity, not a Medicaid provider under the Arkansas Medicaid Program but that provides goods or services to a Medicaid provider under the Arkansas Medicaid Program for which the Medicaid provider submits claims to the Arkansas Medicaid Program or its fiscal agents; and

(9)(A) "Records" means all documents that disclose the nature, extent, and level of healthcare goods and services provided to Medicaid recipients.

(B) "Records" include X-rays, magnetic resonance imaging scans, computed tomography scans, computed axial tomography scans, and other diagnostic imaging commonly used and retained as part of the medical records of a patient.

History. Acts 1979, No. 823, § 2; A.S.A. 1947, § 41-4402; Acts 1993, No. 1291, §§ 1, 8; 2017, No. 978, § 2; 2019, No. 916, §§ 2, 3.

Amendments. The 2017 amendment added "including all transactions . . . or individual" in (1); in (2), substituted "or payment made by any Medicaid provider" for "made to the Arkansas Medicaid Program by any provider" and "any portion" for "any or no portion"; rewrote (3); inserted (4) and (5), and redesignated the remaining subdivisions accordingly; throughout (7), substituted "Medical provider" for "provider" and inserted "risk-based provider organization, managed care organization"; inserted "independent contractor of the Medicaid provider, contractor of the Medicaid provider, or subcontractor of the Medicaid provider" in (7)(A); and rewrote (8).

The 2019 amendment, in (2), inserted "to the Arkansas Medicaid Program, a managed care organization" following "provider", substituted "or any fiscal agent of the Arkansas Medicaid Program or a managed care organization for each good or service" for "or its fiscal agents for each good or service", substituted "and all documentation required to be created or maintained by law or rule to justify, support, approve, or document the delivery of healthcare goods or services to a Medicaid recipient as a condition of participation in the Arkansas Medicaid Program as mandated by the Arkansas Medicaid Program provider agreement, rules, or managed care contract" for "whether or not the State of Arkansas provides any portion of the money that is requested or demanded"; and added the definition for "'Illegal Medicaid participation'".

5-55-103. Unlawful acts — Classification.

(a) It is unlawful for any person to commit Medicaid fraud as prohibited by § 5-55-111.

(b) Medicaid fraud is a:

(1) Class C felony if the aggregate amount of payments illegally claimed is two thousand five hundred dollars ($2,500) or more but less than five thousand dollars ($5,000);

(2) Class B felony if the aggregate amount of payments illegally claimed is five thousand dollars ($5,000) or more but less than twenty-five thousand dollars ($25,000); and

(3) Class A felony if the aggregate amount of payments illegally claimed is twenty-five thousand dollars ($25,000) or more.

(c) Otherwise, Medicaid fraud is a Class A misdemeanor.

History. Acts 1979, No. 823, § 3; A.S.A. 1947, § 41-4403; Acts 1993, No. 1291, § 2; 2003, No. 1122, § 1; 2007, No. 827, § 49; 2017, No. 978, § 3; 2019, No. 916, § 4.

Amendments. The 2017 amendment rewrote (a)(2).

The 2019 amendment deleted the (a)(1) designation; redesignated (a)(2) as (b); redesignated (a)(2)(A) through (a)(2)(C) as (b)(1) through (b)(3); redesignated (a)(3) as (c); and deleted former (b).

5-55-104. Records.

(a) No potential Medicaid recipient is eligible for medical assistance unless he or she has authorized in writing the Secretary of the Department of Human Services to examine all records of the potential Medicaid recipient's own, or of those receiving or having received Medicaid benefits through him or her, whether or not the receipt of the benefits would be allowed by the Arkansas Medicaid Program, for the purpose of investigating whether any person may have committed the crime of Medicaid fraud or for use or potential use in any legal, administrative, or judicial proceeding.

(b) No person is eligible to receive any payment from the Arkansas Medicaid Program or its fiscal agents unless the person has authorized in writing the secretary to examine all records for the purpose of investigating whether any person may have committed the crime of Medicaid fraud or for use or for potential use in any legal, administrative, or judicial proceeding.

(c) The Attorney General and the prosecuting attorneys are allowed access to all records of persons and Medicaid recipients under the Arkansas Medicaid Program to which the secretary has access for the purpose of investigating whether any person may have committed the crime of Medicaid fraud or for use or potential use in any legal, administrative, or judicial proceeding.

(d) Notwithstanding any other law to the contrary, no person is subject to any civil or criminal liability for providing access to records to the secretary, the Attorney General, or the prosecuting attorneys.

(e) Records obtained by the secretary, the Attorney General, or the prosecuting attorneys pursuant to this subchapter are classified as confidential information and are not subject to outside review or release by any individual except when records are used or potentially to be used by any government entity in any legal, administrative, or judicial proceeding.

(f)(1) A Medicaid provider or person providing healthcare goods or services under the Arkansas Medicaid Program is required to maintain all records at least for a period of five (5) years from the date of claimed provision of any goods or services to any Medicaid recipient.

(2)(A) The records described in subdivision (f)(1) of this section shall be available for audit during regular business hours at the address listed in the Medicaid provider agreement or where the healthcare goods or services are provided.

(B) Closed records for inactive patients or clients may be maintained in offsite storage if:

(i) The records can be produced within three (3) working days of being served with a request for records, subpoena, or other lawful notice from any agency with authority to audit the records; and

(ii) The records are maintained within the state.

(C) A Medicaid provider shall disclose upon request the location of any offsite storage facility to any agency with authority to audit the records.

(3) If the healthcare goods or services are provided in the home of the Medicaid recipient, the records shall be maintained at the principal place of business of the Medicaid provider.

(4) If a Medicaid provider goes out of business, the Medicaid provider shall give written notification to the Department of Human Services and the Office of Medicaid Inspector General of where and how the records will be stored.

(g)(1) It is unlawful to destroy or alter any record or supporting documentation with a purpose to conceal a false or fraudulent claim made to the Arkansas Medicaid Program or to interfere with an audit, investigation, or prosecution related to a claim made to the Arkansas Medicaid Program.

(2) A violation of subdivision (g)(1) of this section is a Class B felony.

(h)(1) Any person found not to have maintained any records upon conviction is guilty of a Class D felony if the unavailability of records impairs or obstructs the prosecution of a felony.

(2) Otherwise, a violation of subdivision (h)(1) of this section is a Class A misdemeanor.

(i) It is an affirmative defense to a prosecution under this section that the records in question were lost or destroyed in a flood, fire, or other natural disaster or by a criminal act that did not result from the defendant's conduct.

History. Acts 1979, No. 823, § 10; A.S.A. 1947, § 41-4410; Acts 1993, No. 1291, §§ 3, 7; 2017, No. 978, § 4; 2019, No. 910, § 5127.

Amendments. The 2017 amendment redesignated former (f) as (f)(1); in (f)(1), substituted "A Medicaid provider or person providing healthcare goods or services" for "All persons" and "is" for "are", and deleted "at their principal place of Medicaid business" following "maintain"; added (f)(2) through (f)(4); inserted present (g); redesignated former (g) as (h); inserted "upon conviction" in (h)(1); substituted "a violation of subdivision (h)(1) of this section" for "the unavailability of records" in (h)(2); and added (i).

The 2019 amendment substituted "Secretary" for "Director" in (a); and substituted "secretary" for "director" in (b), (c), (d), and (e).

5-55-107. Restitution and collection.

(a) In addition to any other fine that may be levied, any person found guilty of or who pleads guilty or nolo contendere to Medicaid fraud as described in this subchapter shall make full restitution and payment of costs and expenses as follows:

(1)(A) Restitution to the Department of Human Services, with the restitution to be deposited into the Arkansas Medicaid Program Trust Fund for the loss to the Arkansas Medicaid Program or its fiscal agents.

(B) When permitted by contract or rules, the department may return all or a portion of the restitution to a managed care organization or any similar organization that suffered a loss due to the Medicaid fraud; and

(2) The office of the Attorney General or prosecuting attorney may recover reasonable and necessary costs and expenses incurred during investigation and prosecution of Medicaid fraud.

(b)(1) Upon a conviction of Medicaid fraud, the sentencing authority shall make a finding regarding the amount of restitution that a defendant shall pay, including without limitation:

(A) The full amount of the monetary loss to the Arkansas Medicaid Program and its fiscal agents;

(B) The amount of reasonable and necessary expenses incurred by the office of the Attorney General or the prosecuting attorney during the investigation and prosecution; and

(C) Any other measurable monetary damages directly related to the Medicaid fraud.

(2) Except as provided in subdivision (b)(1) of this section, the sentencing authority shall follow the procedures for determination of the restitution amount under § 5-4-205.

(c)(1) In addition to the judgment and commitment order in a criminal case, a court shall enter a separate restitution order against the defendant convicted of Medicaid fraud regarding restitution consistent with this section and § 5-55-108.

(2) The restitution order is a judgment against the defendant and has the same effect as any other civil judgment recorded in the state.

(3) The restitution order shall:

(A) Require the defendant to:

(i) Comply with § 16-66-221 by filing a schedule of property; and

(ii) Update the schedule of property on an annual basis until the restitution is paid in full; and

(B) State that:

(i) Interest shall accrue on the amount of the restitution from the date of the restitution order under § 16-65-114; and

(ii) Restitution may be collected through an interception of the defendant's state income tax return under § 5-4-206 if the defendant fails to comply with the terms and conditions of the restitution order.

(d)(1)(A) The Attorney General may use all available civil remedies under state law to collect on a restitution order under this section.

(B) Civil efforts to collect restitution may proceed jointly with criminal efforts to collect restitution.

(C) This subsection does not limit the contempt power of the court or prevent a court from revoking the probation or suspended sentence of a defendant who has willfully failed to pay restitution ordered under this section.

(2)(A) The Attorney General shall provide a full accounting of any restitution collected using civil remedies to the court.

(B) A defendant shall not be required to pay restitution more than one (1) time.

(3)(A) Restitution ordered for a loss to the Arkansas Medicaid Program shall not be excused by the court.

(B) A conviction under this subchapter shall not be sealed or expunged until all ordered restitution is paid in full.

(e)(1) Restitution ordered for losses to the Arkansas Medicaid Program shall be paid to the Arkansas Medicaid Program Trust Fund and used by the Department of Human Services as required by state law.

(2) Restitution ordered for reasonable and necessary expenses incurred by the office of the Attorney General or the prosecuting attorney during investigation and prosecution shall be paid to the office of the Attorney General or the prosecuting attorney to be retained and used in future investigations for Medicaid fraud.

History. Acts 1979, No. 823, § 4; A.S.A. 1947, § 41-4404; Acts 1993, No. 1291, § 4; 2017, No. 978, § 5; 2019, No. 916, § 5; 2021, No. 466, § 4.

Amendments. The 2017 amendment added "and collection" in the section heading; and rewrote the section.

The 2019 amendment substituted "restitution and payment of costs as follows" for "restitution to" in the introductory language of (a); redesignated (a)(1) as (a)(1)(A); deleted "and" following "agents" in (a)(1)(A); added (a)(1)(B); and substituted "may recover reasonable" for "for reasonable", and added "of Medicaid fraud" following "prosecution" in (a)(2).

The 2021 amendment, in the introductory language of (a), substituted "shall" for "is required to" and inserted "and expenses"; added "Restitution to" in (a)(1)(A); and inserted "costs and" in (a)(2).

5-55-108. Fines.

(a) Any person who is found guilty of or who pleads guilty or nolo contendere to Medicaid fraud as described in this subchapter shall pay one (1) of the following fines:

(1) If no monetary loss is incurred by the Arkansas Medicaid Program, a fine of not less than one thousand dollars ($1,000) or more than three thousand dollars ($3,000) for each omission or fraudulent act or claim; or

(2) If a monetary loss is incurred by the Arkansas Medicaid Program, a fine of an amount not less than the amount of the monetary loss to the Arkansas Medicaid Program and not more than three (3) times the amount of the monetary loss to the Arkansas Medicaid Program.

(b)(1) The fines described in subdivision (a)(2) of this section may be waived by the prosecuting attorney.

(2) If the fines are waived, the trier of fact may impose fines under § 5-4-201.

(c) All fines assessed under subsection (a) of this section shall be credited to the general revenues of the State of Arkansas.

History. Acts 1979, No. 823, § 6; A.S.A. 1947, § 41-4406; Acts 2017, No. 978, § 5.

Amendments. The 2017 amendment substituted "Fines" for "Civil penalties — Expenses" in the section heading; and rewrote the section.

5-55-110. Suspension of violators.

The Secretary of the Department of Human Services may suspend or revoke the provider agreement between the Department of Human Services and a person in the event the person is found guilty of violating a provision of this subchapter.

History. Acts 1979, No. 823, § 8; A.S.A. 1947, § 41-4408; Acts 1993, No. 1291, § 5; 2019, No. 910, § 5128.

Amendments. The 2019 amendment substituted "Secretary" for "Director".

5-55-111. Criminal acts constituting Medicaid fraud.

A person commits Medicaid fraud when he or she:

(1) Purposely makes or causes to be made any omission or false statement or representation of a material fact in any claim, request for payment, or application for any benefit or payment under the Arkansas Medicaid Program;

(2) At any time purposely makes or causes to be made any omission or false statement or representation of a material fact for use in determining rights to a benefit or payment under the Arkansas Medicaid Program;

(3) Having knowledge of the occurrence of any event affecting his or her initial or continued right to any benefit or payment under the Arkansas Medicaid Program, or the initial or continued right to any benefit or payment under the Arkansas Medicaid Program of any other individual in whose behalf he or she has applied for or is receiving the benefit or payment under the Arkansas Medicaid Program, purposely conceals or fails to disclose the event with an intent fraudulently to secure the benefit or payment under the Arkansas Medicaid Program either in a greater amount or quantity than is due or when no benefit or payment under the Arkansas Medicaid Program is authorized;

(4) Having made or submitted a claim, request for payment, or application to receive any benefit or payment under the Arkansas Medicaid Program for the use and benefit of another person and having received it, purposely converts the benefit or payment under the Arkansas Medicaid Program or any part of the benefit or payment under the Arkansas Medicaid Program to a use other than for the use and benefit of the other person;

(5) Purposely presents or causes to be presented a claim for a service required to be provided by a person with a particular type of license or credential while knowing that the individual who furnished the service was not licensed or credentialed;

(6) Purposely solicits or receives any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind:

(A) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under the Arkansas Medicaid Program; or

(B) In return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under the Arkansas Medicaid Program;

(7)(A) Purposely offers or pays any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, to any person to induce that person to:

(i) Refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under the Arkansas Medicaid Program; or

(ii) Purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under the Arkansas Medicaid Program.

(B) If the transaction is otherwise legal and properly documented as occurring in the normal course of business, subdivisions (7)(A)(i) and (ii) of this section do not apply to:

(i) A discount or other reduction in price obtained by a provider of services or other entity under the Arkansas Medicaid Program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under the Arkansas Medicaid Program;

(ii) Any amount paid by an employer to an employee who has a bona fide employment relationship with the employer for employment in the provision of covered items or services;

(iii) Any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under the Arkansas Medicaid Program if:

(a) The person has a written contract with each individual or entity that specifies the amount to be paid to the person and the amount may be a fixed amount or a fixed percentage of the value of the purchases made by each individual or entity under the contract; and

(b) In the case of an entity that is a provider of services as defined in § 20-9-101, the person discloses in such form and manner as the Secretary of the Department of Human Services requires to the entity and, upon request, to the secretary, the amount received from each vendor with respect to purchases made by or on behalf of the entity; or

(iv) Any payment practice specified by the secretary promulgated pursuant to applicable federal or state law;

(8) Purposely makes or causes to be made, or induces or seeks to induce, any omission or false statement or representation of a material fact with respect to the conditions or operation of any institution, facility, or Medicaid provider in order that the institution, facility, or Medicaid provider may qualify to obtain or maintain any licensure or certification when the licensure or certification is required to be enrolled or eligible to deliver any healthcare goods or services to Medicaid recipients by state law, federal law, or the rules of the Arkansas Medicaid Program;

(9) Purposely:

(A) Charges, for any service provided to a patient under the Arkansas Medicaid Program, money or other consideration at a rate in excess of the rates established by the state; or

(B) Charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under the Arkansas Medicaid Program, any gift, money, donation, or other consideration other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient:

(i) As a precondition of admitting a patient to a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities; or

(ii) As a requirement for the patient's continued stay in a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities when the cost of the services provided in the hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities to the patient is paid for in whole or in part under the Arkansas Medicaid Program;

(10) Purposely makes or causes to be made any false statement or representation of a material fact in any application for a benefit or payment in violation of the rules and provider agreements issued by the Arkansas Medicaid Program or its fiscal agents;

(11) Knowingly submits false documentation or makes or causes to be made or induces or seeks to induce any material false statement to the Office of Medicaid Inspector General or the Medicaid Fraud Control Unit within the office of the Attorney General during an audit or in response to a request for information or a subpoena;

(12) Purposely forges the signature of a doctor, nurse, or other medical professional on a prescription, referral for healthcare goods or services, or finding of medical necessity for any Medicaid recipient of the Arkansas Medicaid Program;

(13) Knowingly submits a forged prescription, referral for healthcare goods or services, or finding of medical necessity for:

(A) Payment under the Arkansas Medicaid Program; or

(B) An audit or in response to a request for information or a subpoena to the Office of Medicaid Inspector General or the Medicaid Fraud Control Unit within the office of the Attorney General; or

(14) Purposely places a false entry in a medical chart, medical record, or any record of services required to be made to the Arkansas Medicaid Program that indicates that healthcare goods or services have been provided to a Medicaid recipient knowing that the healthcare goods or services were not provided.

History. Acts 1993, No. 1291, § 6; 2017, No. 978, § 6; 2019, No. 315, § 152; 2019, No. 910, §§ 5129, 5130; 2019, No. 916, §§ 6-8.

Amendments. The 2017 amendment inserted "omission or" in (1) and (2); inserted "claim, request for payment, or" in (1); inserted "or submitted a claim, request for payment, or" in (4); rewrote (8); and added (11) through (14).

The 2019 amendment by No. 315 deleted "regulations" following "rules" in (10).

The 2019 amendment by No. 910 substituted "Secretary" for "Director" in (7)(B)(iii)(b); and substituted "secretary" for "director" in (7)(B)(iii)(b) and in (7)(B)(iv).

The 2019 amendment by No. 916, in (5), substituted "service required to be pro-

vided by a person with a particular type of license or credential while knowing" for "physician's service for which payment may be made under a program under the Arkansas Medicaid Program while knowing", and substituted "licensed or credentialed" for "licensed as a physician"; substituted "If the transaction is otherwise legal and properly documented as occurring in the normal course of business, subdivisions (7)(A)(i) and (ii) of this section" for "Subdivisions (7)(A)(i) and (ii) of this section" in the introductory language of (7)(B); and added "for any Medicaid recipient of the Arkansas Medicaid Program" in (12).

5-55-112. [Repealed.]

Publisher's Notes. This section, concerning disposition of offenders, was repealed by Acts 2017, No. 978, § 7. The section was derived from Acts 1993, No. 1291, § 6; 2005, No. 164, § 1.

5-55-113. Reward for information.

(a) The court may pay a person such sums, not exceeding ten percent (10%) of the aggregate penalty recovered under this section, as the court may deem just, for information the person may have provided that led to detecting and bringing to trial and punishment a person guilty of violating the Medicaid fraud laws.

(b)(1) Upon the disposition of any criminal action relating to a violation of this subchapter in which a penalty is recovered, the Attorney General may petition the court on behalf of a person who may have provided information that led to detecting and bringing to trial and punishment a person guilty of Medicaid fraud to award the person in an amount commensurate with the quality and usefulness of the information determined by the court to have been provided, in accordance with the requirements of this subchapter.

(2) If the Attorney General elects not to petition the court on behalf of the person, the person may petition the court on his or her own behalf.

(c) Neither the state nor any defendant within the action is liable for expenses that a person incurs in bringing an action under this section.

(d) An employee or fiscal agents charged with the duty of referring or investigating a case of Medicaid fraud who are employed by or contract with any governmental entity are not eligible to receive a reward under this section.

(e)(1) The Attorney General may agree to a payment of up to ten percent (10%) of the civil penalty as a reward in any settlement agreement under this section.

(2) A portion of restitution shall not be used as a reward.

History. Acts 1993, No. 1300, § 1; 2011, No. 1154, § 2; 2019, No. 916, § 9.

Amendments. The 2019 amendment inserted "under this section" following "recovered" in (a); and added (e).

5-55-114. Special deputy prosecutor.

(a) A prosecuting attorney having jurisdiction over an offense may designate an attorney employed by the office of the Attorney General as

a special deputy prosecutor to prosecute any charges related to healthcare fraud or any other charges that may arise from the same factual allegations or may be properly joined under state law.

(b)(1) As a special deputy prosecutor, the attorney may issue a subpoena and may administer an oath as provided in § 25-16-705.

(2) The subpoena shall be substantially in the form set forth in § 25-16-705(b).

(c) A special deputy prosecutor appointed and functioning as authorized under this section is entitled to the same immunity granted by law to the prosecuting attorney.

(d)(1) Appointment as a special deputy prosecutor does not enable the attorney to receive any additional fees or salary from the state for services provided pursuant to the appointment.

(2) Expenses of the special deputy prosecutor and any fees and costs incurred by the special deputy prosecutor in the prosecution of cases as provided in this section are the responsibility of the Attorney General.

(e) The prosecuting attorney may revoke the appointment of a special deputy prosecutor at any time.

History. Acts 1995, No. 894, § 2; 2017, No. 978, § 8.

Amendments. The 2017 amendment rewrote (a).

5-55-115. Suspension, exclusion, and illegal Medicaid participation.

(a) It is unlawful for a suspended or excluded individual or organization to participate in the Arkansas Medicaid Program under federal and state laws.

(b)(1) A person commits illegal Medicaid participation if:

(A) Having been suspended from the Arkansas Medicaid Program or placed on a state or federal excluded Medicaid provider list, the person knowingly participates, directly or indirectly, in the Arkansas Medicaid Program; or

(B) As a certified health provider enrolled in the Arkansas Medicaid Program pursuant to Title XIX of the Social Security Act, as amended, 42 U.S.C. § 1396 et seq., or as the fiscal agent of the certified health provider, the person employs, or engages as an independent contractor, or engages as a consultant, or otherwise permits the participation in the business activities of the certified health provider, any person who has pleaded guilty or nolo contendere to or has been found guilty of a charge of Medicaid fraud, theft of public benefits, § 5-36-202, or abuse of adults, § 5-28-101 et seq.

(2) Illegal Medicaid participation is a Class A misdemeanor.

History. Acts 2019, No. 916, § 10.

Subchapter 2 — Illegal Food Coupons

SECTION.
5-55-201. Traffic in illegal food coupons or vouchers.
5-55-202. Illegal use, transfer, acquisition, or possession of vouchers.
5-55-203. Illegal presentation of food coupons or vouchers for payment.

5-55-201. Traffic in illegal food coupons or vouchers.

(a)(1) Any individual, partnership, corporation, or other legal entity that issues food coupons in a manner not authorized by federal law and regulations or state law and rules or that uses, transfers, acquires, possesses, or presents any food coupons for payment not authorized by federal and state law or federal regulations and state rules is guilty of a Class D felony.

(2) However, if the food coupons are of a value of less than one hundred dollars ($100), the individual, partnership, corporation, or other legal entity is guilty of a Class A misdemeanor.

(b) Any individual, partnership, corporation, or other legal entity that issues a voucher used in the federal Special Supplemental Nutrition Program for Women, Infants and Children (WIC) in a manner not authorized by federal law and regulations or state law and rules or that uses, transfers, acquires, possesses, or presents any voucher used in the federal Special Supplemental Nutrition Program for Women, Infants and Children (WIC) for payment not authorized by federal and state law or federal regulations and state rules is guilty of a Class A misdemeanor.

(c) As used in this subchapter, "food coupons" means any printed material, magnetically encoded instrument, or other device or process issued by the Department of Human Services or its successors, the purpose of which is to permit the purchase of food as provided for by the Food Stamp Act of 1977, 7 U.S.C. § 2011 et seq., or regulations promulgated pursuant to the Food Stamp Act of 1977, 7 U.S.C. § 2011 et seq.

History. Acts 1979, No. 714, § 1; A.S.A. 1947, § 41-4301; Acts 1993, No. 489, § 1; 1995, No. 126, § 1; 1995, No. 345, § 1; 2005, No. 1994, § 426; 2019, No. 315, § 153.

Amendments. The 2019 amendment, in (a)(1) and (b), substituted "state law and rules" for "state law and regulations" and "federal regulations and state rules" for "federal and state regulations".

5-55-202. Illegal use, transfer, acquisition, or possession of vouchers.

Any person who knowingly uses, transfers, acquires, or possesses vouchers in any manner not authorized by the federal Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by the Child Nutrition Act of 1966, 42 U.S.C. § 1771 et seq., as amended, or federal regulations and state rules issued pursuant to

the Child Nutrition Act of 1966, 42 U.S.C. § 1771 et seq., if the vouchers are of a value of less than one hundred dollars ($100), is guilty of a Class A misdemeanor.

History. Acts 1979, No. 714, § 2; A.S.A. 1947, § 41-4302; Acts 1993, No. 489, § 2; 2005, No. 1994, § 222; 2019, No. 315, § 154.

Amendments. The 2019 amendment substituted "federal regulations and state rules" for "federal and state regulations".

5-55-203. Illegal presentation of food coupons or vouchers for payment.

(a)(1) Any person who presents or causes to be presented food coupons for payment or redemption of the value of one hundred dollars ($100) or more knowing the food coupons to have been received, transferred, or used in any manner in violation of a provision of the Food Stamp Act of 1977, 7 U.S.C. § 2011 et seq., or the federal regulations or state rules issued pursuant to the Food Stamp Act of 1977, 7 U.S.C. § 2011 et seq., is guilty of a Class D felony.

(2) However, if the food coupons are of a value of less than one hundred dollars ($100), the person is guilty of a Class A misdemeanor.

(b) Any person who presents or causes to be presented vouchers for payment or redemption of the value of one hundred dollars ($100) or more knowing the vouchers to have been received, transferred, or used in any manner in violation of a provision of the federal Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by the Child Nutrition Act of 1966, 42 U.S.C. § 1771 et seq., as amended, or the federal regulations or state rules issued pursuant to the Child Nutrition Act of 1966, 42 U.S.C. § 1771 et seq., is guilty of a Class A misdemeanor.

History. Acts 1979, No. 714, § 3; A.S.A. 1947, § 41-4303; Acts 1993, No. 489, § 3; 2005, No. 1994, § 427; 2019, No. 315, § 155.

Amendments. The 2019 amendment substituted "federal regulations or state rules" for "federal or state regulations" in (a)(1) and (b).

Subchapter 5 — Lottery Fraud

5-55-501. Lottery fraud.

CASE NOTES

Evidence.

Even if the trial court abused its discretion by admitting an email concerning the redemption of a nonactive lottery ticket into evidence during defendant's trial for lottery fraud, defendant failed to show that he was prejudiced; before the State introduced the email, an employee of the state lottery testified without objection that he received notification that a nonactivated lottery ticket from a missing booklet had been redeemed at a retail store, and even though defendant maintained that he received the ticket as a tip, he admitted that he signed for the shipment of lottery tickets from which the booklet was missing. Sitzmann v. State, 2019 Ark. App. 78, 569 S.W.3d 913 (2019).

Subchapter 6 — Election, Petition, and Ballot Fraud

SECTION.
5-55-601. Petition fraud.

Effective Dates. Acts 2019, No. 376, § 14: Mar. 8, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act amends the process for circulating initiative petitions and referendum petitions; and that the provisions of this act should become effective immediately so that its provisions apply to all petitions circulated after the passage of the act to avoid confusion in petition circulation. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto." The emergency clause for Acts 2019, No. 376 was held to be defective in Safe Surgery Ark. v. Thurston, 2019 Ark. 403.

5-55-601. Petition fraud.

(a) As used in this section, "petition" means a petition under § 3-8-201 et seq., § 3-8-801 et seq., or § 7-9-101 et seq.

(b) A person commits the offense of petition fraud:

(1) If the person knowingly:

(A) Signs a name other than his or her name to a petition;

(B) Signs his or her name more than one (1) time to a petition; or

(C) Signs a petition when he or she is not legally entitled to sign the petition;

(2) If the person acting as a canvasser, notary, sponsor as defined under § 7-9-101, or agent of a sponsor:

(A) Signs a name other than his or her own to a petition;

(B) Prints a name, address, or birth date other than his or her own to a petition unless the signor requires assistance due to disability and the person complies with § 7-9-103;

(C) Solicits or obtains a signature to a petition knowing that the person signing is not qualified to sign the petition;

(D) Knowingly pays a person any form of compensation in exchange for signing a petition as a petitioner;

(E) Accepts or pays money or anything of value for obtaining signatures on a petition when the person acting as a canvasser, sponsor, or agent of a sponsor knows that the person acting as a canvasser's name or address is not included on the sponsor's list filed with the Secretary of State under § 7-9-601; or

(F) Knowingly misrepresents the purpose and effect of the petition or the measure affected for the purpose of causing a person to sign a petition;

(3) If the person acting as a canvasser knowingly makes a false statement on a petition verification form;

(4) If the person acting as a notary knowingly fails to witness a canvasser's affidavit by witnessing the signing of the instrument in person and either personally knowing the signor or by being presented with proof of the identity of the signer; or

(5) If the person acting as a sponsor files a petition or a part of a petition with the official charged with verifying the signatures knowing that the petition or part of the petition contains one (1) or more false or fraudulent signatures unless each false or fraudulent signature is clearly stricken by the sponsor before filing.

(c) Petition fraud is a Class D felony.

History. Acts 2013, No. 1432, § 9; 2019, No. 376, § 1.

Amendments. The 2019 amendment substituted "Class D felony" for "Class A misdemeanor" in (c).

CASE NOTES

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was "to avoid confusion in petition circulation"; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. Safe Surgery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376's new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner's referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. Safe Surgery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

SUBTITLE 6. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, OR WELFARE

CHAPTER 60

GENERAL PROVISIONS

SUBCHAPTER.

1. General Provisions.

Subchapter 1 — General Provisions

SECTION.

5-60-103. Unlawful use of an unmanned aircraft system.
5-60-123. Obstruction or interference with emergency medical personnel or first responder.

5-60-103. Unlawful use of an unmanned aircraft system.

(a) As used in this section:

(1) "Critical infrastructure" means:

(A) An electrical power generation or delivery system;

(B) A petroleum refinery;

(C) A chemical or rubber manufacturing facility;

(D) A petroleum or chemical storage facility;

(E) A railroad operating facility;

(F) A communication tower or facility;

(G) A food processing or manufacturing facility; or

(H) A correctional or detention facility; and

(2)(A) "Unmanned aircraft system" means an unmanned, powered aircraft that:

(i) Does not carry a human operator;

(ii) Can be autonomous or remotely piloted or operated; and

(iii) Can be expendable or recoverable.

(B) "Unmanned aircraft system" does not include:

(i) A satellite orbiting the earth;

(ii) An unmanned aircraft system used by the United States Government or a person who is acting pursuant to contract with the United States Government to conduct surveillance of specific critical infrastructure;

(iii) An unmanned aircraft system used by the state after consultation with the Governor or a person who is acting under contract with the state to conduct surveillance of specific critical infrastructure;

(iv) An unmanned aircraft system used under a certificate of authorization issued by the Federal Aviation Administration; or

(v) An unmanned aircraft used by a law enforcement agency, emergency medical service agency, hazardous materials response team, disaster management agency, or other emergency management agency for the purpose of incident command, area reconnaissance, personnel and equipment deployment monitoring, training, or a related purpose.

(b) A person commits the offense of unlawful use of an unmanned aircraft system if he or she knowingly uses an unmanned aircraft system to conduct surveillance of, gather evidence or collect information about, or photographically or electronically record critical infrastructure without the prior written consent of the owner of the critical infrastructure.

(c) This section does not prohibit:

(1)(A) A person from using an unmanned aircraft system to conduct surveillance of, gather evidence or collect information about, or photographically or electronically record his or her own property that is:

(i) Located on his or her own immovable property; or

(ii) Located on immovable property owned by another person under a valid lease, servitude, right-of-way, right of use, permit, license, or other right.

(B) A third person retained by the owner of the property described in subdivision (c)(1)(A) of this section to conduct activities described in subdivision (c)(1)(A) of this section is not prohibited under this section from using an unmanned aircraft system to conduct the activities described in this subdivision (c)(1); or

(2) An insurance company or a person acting on behalf of an insurance company from using an unmanned aircraft system for purposes of underwriting an insurance risk or investigating damage to insured property.

(d) Unlawful use of an unmanned aircraft system is:

(1) A Class B misdemeanor; or

(2) A Class A misdemeanor for a second or subsequent offense.

History. Acts 2015, No. 1019, § 1; 2019, No. 320, § 1; 2019, No. 508, § 1; 2019, No. 1000, § 1; 2021, No. 140, § 1.

Publisher's Notes. Acts 2019, No. 1000, § 1 specifically amended this section as amended by Acts 2019, No. 508.

Amendments. The 2019 amendment by No. 320 deleted former (a)(2)(B)(iv) and redesignated former (a)(2)(B)(v) and (a)(2)(B)(vi) as (a)(2)(B)(iv) and (a)(2)(B)(v).

The 2019 amendment by No. 508 added (a)(1)(E); substituted "United States Government" for "federal government" in (a)(2)(B)(ii); deleted former (a)(2)(B)(iv); and redesignated former (a)(2)(B)(v) and (a)(2)(B)(vi) as (a)(2)(B)(iv) and (a)(2)(B)(v).

The 2019 amendment by No. 1000 deleted "including without limitation a railroad right-of-way" from the end of (a)(1)(E), as added by Acts 2019, No. 508, and added (A)(1)(F).

The 2021 amendment added (a)(1)(G) and (a)(1)(H).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Lindsey P. Gustafson, Arkansas Airspace Ownership and the Challenge of Drones, 39 U. Ark. Little Rock L. Rev. 245 (2017).

5-60-120. Interception and recording.

RESEARCH REFERENCES

ALR. Facial and As-Applied Validity of State Wiretapping Acts in Criminal Proceedings. 25 A.L.R.7th Art. 6 (2017).

CASE NOTES

Analysis

Evidence.
—Admissibility of Unlawful Recording.

Evidence.

—Admissibility of Unlawful Recording.

Defendant's motion in limine to exclude a taped audio recording of a telephone conversation between him and a detective was properly denied; although this section made the third party's recording of the conversation unlawful, it did not proscribe its admissibility, and defendant failed to argue 18 U.S.C. § 2515 to the circuit court. King v. State, 2019 Ark. 114, 571 S.W.3d 476 (2019).

5-60-123. Obstruction or interference with emergency medical personnel or first responder.

(a) As used in this section:

(1) "Emergency medical services personnel" includes without limitation a governmental, private, or volunteer:

(A) Emergency medical services personnel;

(B) Rescue technician; or

(C) Emergency medical care provider; and

(2) "First responder" means a firefighter or a law enforcement officer.

(b) A person who knowingly obstructs or interferes with emergency medical services personnel or a first responder in the performance of the emergency medical services personnel's or first responder's rescue mission upon conviction is guilty of:

(1) A Class A misdemeanor if the person uses or threatens to use physical force; or

(2) A Class C misdemeanor if otherwise committed.

(c) A person who purposely obstructs or interferes with emergency medical services personnel or a first responder in the performance of the emergency medical services personnel's or first responder's rescue mission upon conviction is guilty of a Class D felony.

History. Acts 2005, No. 1683, § 1; 2009, No. 689, § 2; 2017, No. 952, § 1.

Amendments. The 2017 amendment added "or first responder" in the section heading; and rewrote the section.

Cross References. Civil action against a person who engages in a riot or disorderly conduct, or who obstructs or interferes with emergency medical services personnel or first responder, § 16-118-114.

CHAPTER 61

ABORTION

SUBCHAPTER.

1. General Provisions.
3. Arkansas Human Life Protection Act. [Effective If Contingency In Acts 2019, No. 180, § 2, Is Met]
4. Arkansas Unborn Child Protection Act.

Subchapter 1 — General Provisions

SECTION.
5-61-101. Abortion only by licensed physician.

5-61-101. Abortion only by licensed physician.

(a) It is unlawful for any person to induce another person to have an abortion or to knowingly terminate the pregnancy of a woman known to be pregnant with the purpose to cause fetal death unless the person is a physician licensed to practice medicine in the State of Arkansas.

(b) A violation of subsection (a) of this section is a Class D felony.

(c) This section does not allow the charging or conviction of a woman with any criminal offense in the death of her own unborn child in utero.

History. Acts 1983, No. 715, §§ 1, 2; A.S.A. 1947, § 41-2561; Acts 1999, No. 1273, § 4; 2017, No. 383, § 1.

Amendments. The 2017 amendment substituted "physician" for "medical practitioner" in the section heading; in (a), substituted "knowingly" for "willfully", "purpose" for "intent", and "is a physician licensed" for "is licensed"; substituted "A violation" for "Violation" in (b); and substituted "This section does not" for "Nothing in this section shall be construed to" in (c).

RESEARCH REFERENCES

ALR. Use of Planned Parenthood v. Casey's "Large-Fraction" Test in Review of Abortion Regulations. 38 A.L.R.7th Art. 6 (2019).

5-61-102. Unlawful abortion.

CASE NOTES

Cited: Bynum v. State, 2018 Ark. App. 201, 546 S.W.3d 533 (2018).

Subchapter 3 — Arkansas Human Life Protection Act. [Effective If Contingency In Acts 2019, No. 180, § 2, Is Met]

SECTION.
5-61-301. Title. [Effective if contingency in Acts 2019, No. 180, § 2, is met]
5-61-302. Legislative findings and intent. [Effective if contingency in Acts 2019, No. 180, § 2, is met]
5-61-303. Definitions. [Effective if contingency in Acts 2019, No. 180, § 2, is met]
5-61-304. Prohibition. [Effective if contingency in Acts 2019, No. 180, § 2, is met]

Effective Dates. Acts 2019, No. 180, § 2. Contingent effective date clause provided: "This act becomes effective on and after the certification of the Attorney General that: (1) The United States Supreme Court overrules, in whole or in part, the central holding of Roe v. Wade, 410 U.S. 113 (1973), reaffirmed by Planned Parent-

hood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992), thereby restoring to the State of Arkansas the authority to prohibit abortion; or (2) An amendment to the United States Constitution is adopted that, in whole or in part, restores to the State of Arkansas the authority to prohibit abortion".

5-61-301. Title. [Effective if contingency in Acts 2019, No. 180, § 2, is met]

This subchapter shall be known and may be cited as the "Arkansas Human Life Protection Act".

History. Acts 2019, No. 180, § 1.

5-61-302. Legislative findings and intent. [Effective if contingency in Acts 2019, No. 180, § 2, is met]

(a) The General Assembly finds that:

(1) It is time for the United States Supreme Court to redress and correct the grave injustice and the crime against humanity which is being perpetuated by its decisions in Roe v. Wade, Doe v. Bolton, and Planned Parenthood v. Casey;

(2) The United States Supreme Court committed a grave injustice and a crime against humanity in the Dred Scott decision by denying personhood to a class of human beings, African-Americans;

(3) The United States Supreme Court also committed a grave injustice and a crime against humanity by upholding the "separate but equal" doctrine in Plessy v. Ferguson which withdrew legal protection from a class of human beings who were persons under the United States Constitution, African-Americans;

(4) A crime against humanity occurs when a government withdraws legal protection from a class of human beings resulting in severe deprivation of their rights, up to and including death;

(5) In Brown v. Board of Education, the United States Supreme Court corrected its own grave injustice and crime against humanity created in Plessy v. Ferguson by overruling and abolishing the fifty-eight-year-old "separate but equal" doctrine, thus giving equal legal rights to African-Americans;

(6) Under the doctrine of stare decisis, the three (3) abortion cases mentioned in subdivision (a)(1) of this section meet the test for when a case should be overturned by the United States Supreme Court because of significant changes in facts or laws, including without limitation the following:

(A) The cases have not been accepted by scholars, judges, and the American people, as witnessed to by the fact that these cases are still the most intensely controversial cases in American history and at the present time;

(B) New scientific advances have demonstrated since 1973 that life begins at the moment of conception and the child in a woman's womb is a human being;

(C) Scientific evidence and personal testimonies document the massive harm that abortion causes to women;

(D) The laws in all fifty (50) states have now changed through "Safe Haven" laws to eliminate all burden of child care from women who do not want to care for a child; and

(E) Public attitudes favoring adoption have created a culture of adoption in the United States with many families waiting long periods of time to adopt newborn infants;

(7) Before the United States Supreme Court decision of Roe v. Wade, Arkansas had already enacted prohibitions on abortions under § 5-61-101 et seq., and authorized the refusal to perform, participate, consent, or submit to an abortion under § 20-16-601;

(8) Arkansas Constitution, Amendment 68, states that the policy of Arkansas is to protect the life of every unborn child from conception until birth and that public funds shall not be used to pay for any abortion except to save the life of the mother;

(9) Arkansas passed the Arkansas Human Heartbeat Protection Act, § 20-16-1301 et seq., in 2013 which shows the will of the Arkansas people to save the lives of unborn children;

(10) Arkansas has continued to pass additional legislation in 2015 and 2017 that further shows the will of the Arkansas people to save the lives of unborn children;

(11)(A) Since the decision of Roe v. Wade, approximately sixty million sixty-nine thousand nine hundred seventy-one (60,069,971) abortions have ended the lives of unborn children.

(B) In 2015, six hundred thirty-eight thousand one hundred sixty-nine (638,169) legal induced abortions were reported to the Centers for Disease Control and Prevention from forty-nine (49) reporting areas in the United States.

(C) The Department of Health reports that three thousand two hundred forty-nine (3,249) abortions took place in Arkansas during 2017, including abortions performed on out-of-state residents; and

(12) The State of Arkansas urgently pleads with the United States Supreme Court to do the right thing, as it did in one of its greatest cases, Brown v. Board of Education, which overturned a fifty-eight-year-old precedent of the United States, and reverse, cancel, overturn, and annul Roe v. Wade, Doe v. Bolton, and Planned Parenthood v. Casey.

(b) It is the intent of this subchapter to ensure that abortion in Arkansas is abolished and protect the lives of unborn children.

History. Acts 2019, No. 180, § 1.

5-61-303. Definitions. [Effective if contingency in Acts 2019, No. 180, § 2, is met]

As used in this subchapter:

(1)(A) "Abortion" means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the

pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of the unborn child.

(B) An act under subdivision (1)(A) of this section is not an abortion if the act is performed with the purpose to:

(i) Save the life or preserve the health of the unborn child;

(ii) Remove a dead unborn child caused by spontaneous abortion; or

(iii) Remove an ectopic pregnancy;

(2) "Fertilization" means the fusion of a human spermatozoon with a human ovum;

(3) "Medical emergency" means a condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself; and

(4) "Unborn child" means an individual organism of the species Homo sapiens from fertilization until live birth.

History. Acts 2019, No. 180, § 1.

5-61-304. Prohibition. [Effective if contingency in Acts 2019, No. 180, § 2, is met]

(a) A person shall not purposely perform or attempt to perform an abortion except to save the life of a pregnant woman in a medical emergency.

(b) Performing or attempting to perform an abortion is an unclassified felony with a fine not to exceed one hundred thousand dollars ($100,000) or imprisonment not to exceed ten (10) years, or both.

(c) This section does not:

(1) Authorize the charging or conviction of a woman with any criminal offense in the death of her own unborn child; or

(2) Prohibit the sale, use, prescription, or administration of a contraceptive measure, drug, or chemical if the contraceptive measure, drug, or chemical is administered before the time when a pregnancy could be determined through conventional medical testing and if the contraceptive measure, drug, or chemical is sold, used, prescribed, or administered in accordance with manufacturer instructions.

(d) It is an affirmative defense to prosecution under this section if a licensed physician provides medical treatment to a pregnant woman which results in the accidental or unintentional injury or death to the unborn child.

History. Acts 2019, No. 180, § 1.

Subchapter 4 — Arkansas Unborn Child Protection Act

SECTION.
5-61-401. Title.
5-61-402. Legislative findings and intent.
SECTION.
5-61-403. Definitions.
5-61-404. Prohibition.

5-61-401. Title.

This subchapter shall be known and may be cited as the "Arkansas Unborn Child Protection Act".

History. Acts 2021, No. 309, § 1.

5-61-402. Legislative findings and intent.

(a) The General Assembly finds that:

(1) It is time for the United States Supreme Court to redress and correct the grave injustice and the crime against humanity which is being perpetuated by its decisions in Roe v. Wade, Doe v. Bolton, and Planned Parenthood v. Casey;

(2) The United States Supreme Court committed a grave injustice and a crime against humanity in the Dred Scott decision by denying personhood to a class of human beings, African-Americans;

(3) The United States Supreme Court also committed a grave injustice and a crime against humanity by upholding the "separate but equal" doctrine in Plessy v. Ferguson, which withdrew legal protection from a class of human beings who were persons under the United States Constitution, African-Americans;

(4) A crime against humanity occurs when a government withdraws legal protection from a class of human beings, resulting in severe deprivation of their rights, up to and including death;

(5) In Brown v. Board of Education, the United States Supreme Court corrected its own grave injustice and crime against humanity created in Plessy v. Ferguson by overruling and abolishing the fifty-eight-year-old "separate but equal" doctrine, thus giving equal legal rights to African-Americans;

(6) Under the doctrine of stare decisis, the three (3) abortion cases mentioned in subdivision (a)(1) of this section meet the test for when a case should be overturned by the United States Supreme Court because of significant changes in facts or laws, including without limitation the following:

(A) The cases have not been accepted by scholars, judges, and the American people, as witnessed to by the fact that these cases are still the most intensely controversial cases in American history and at the present time;

(B) New scientific advances have demonstrated since 1973 that life begins at the moment of conception and that the child in a woman's womb is a human being;

(C) Scientific evidence and personal testimonies document the massive harm that abortion causes to women;

(D) The laws in all fifty (50) states have now changed through "Safe Haven" laws to eliminate all burden of child care from women who do not want to care for a child; and

(E) Public attitudes favoring adoption have created a culture of adoption in the United States, with many families waiting long periods of time to adopt newborn infants;

(7) Before the United States Supreme Court decision of Roe v. Wade, Arkansas had already enacted prohibitions on abortions under § 5-61-101 et seq., and authorized the refusal to perform, participate, consent, or submit to an abortion under § 20-16-601;

(8) Arkansas Constitution, Amendment 68, states that the policy of Arkansas is to protect the life of every unborn child from conception until birth and that public funds shall not be used to pay for any abortion, except to save the life of the mother;

(9) Arkansas passed the Arkansas Human Heartbeat Protection Act, § 20-16-1301 et seq., in 2013, which shows the will of the Arkansas people to save the lives of unborn children;

(10) Arkansas has continued to pass additional legislation in 2015, 2017, and 2019 that further shows the will of the Arkansas people to save the lives of unborn children;

(11)(A) Since the decision of Roe v. Wade, approximately sixty million sixty-nine thousand nine hundred seventy-one (60,069,971) abortions have ended the lives of unborn children.

(B) In 2015, six hundred thirty-eight thousand one hundred sixty-nine (638,169) legal induced abortions were reported to the Centers for Disease Control and Prevention from forty-nine (49) reporting areas in the United States.

(C) The Department of Health reports that two thousand nine hundred sixty-three (2,963) abortions took place in Arkansas during 2019, including abortions performed on out-of-state residents; and

(12) The State of Arkansas urgently pleads with the United States Supreme Court to do the right thing, as they did in one of their greatest cases, Brown v. Board of Education, which overturned a fifty-eight-year-old precedent of the United States, and reverse, cancel, overturn, and annul Roe v. Wade, Doe v. Bolton, and Planned Parenthood v. Casey.

(b) It is the intent of this subchapter to ensure that abortion in Arkansas is abolished and to protect the lives of unborn children.

History. Acts 2021, No. 309, § 1.

5-61-403. Definitions.

As used in this subchapter:

(1)(A) "Abortion" means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of the unborn child.

(B) An act under subdivision (1)(A) of this section is not an abortion if the act is performed with the purpose to:

(i) Save the life or preserve the health of the unborn child;

(ii) Remove a dead unborn child caused by spontaneous abortion; or

(iii) Remove an ectopic pregnancy;

(2) "Fertilization" means the fusion of a human spermatozoon with a human ovum;

(3) "Medical emergency" means a condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself; and

(4) "Unborn child" means an individual organism of the species Homo sapiens from fertilization until live birth.

History. Acts 2021, No. 309, § 1.

5-61-404. Prohibition.

(a) A person shall not purposely perform or attempt to perform an abortion except to save the life of a pregnant woman in a medical emergency.

(b) Performing or attempting to perform an abortion is an unclassified felony with a fine not to exceed one hundred thousand dollars ($100,000) or imprisonment not to exceed ten (10) years, or both.

(c) This section does not:

(1) Authorize the charging or conviction of a woman with any criminal offense in the death of her own unborn child; or

(2) Prohibit the sale, use, prescription, or administration of a contraceptive measure, drug, or chemical if the contraceptive measure, drug, or chemical is administered before the time when a pregnancy could be determined through conventional medical testing and if the contraceptive measure, drug, or chemical is sold, used, prescribed, or administered in accordance with manufacturer instructions.

(d) It is an affirmative defense to prosecution under this section if a licensed physician provides medical treatment to a pregnant woman which results in the accidental or unintentional physical injury or death to the unborn child.

History. Acts 2021, No. 309, § 1.

CHAPTER 62

ANIMALS

SUBCHAPTER.

1. General Provisions.

Subchapter 1 — General Provisions

SECTION.
5-62-104. Offense of aggravated cruelty to a dog, cat, or equine — Definition.
5-62-105. Exemptions.
5-62-106. Disposition of animal.
5-62-107. Immunity for reporting cruelty to animals or aggravated cruelty to a dog, cat, or equine.
5-62-111. Prevention of cruelty.
5-62-116. Diseased animals — Sale.
5-62-126. Acts of God — Emergency conditions.

5-62-104. Offense of aggravated cruelty to a dog, cat, or equine — Definition.

(a) A person commits the offense of aggravated cruelty to a dog, cat, or equine if he or she knowingly tortures any dog, cat, or equine.

(b) A person who pleads guilty or nolo contendere to or is found guilty of aggravated cruelty to a dog, cat, or equine:

(1) Shall be guilty of a Class D felony;

(2) May be ordered to perform up to four hundred (400) hours of community service; and

(3) Both:

(A) Ordered to receive a psychiatric or psychological evaluation; and

(B) If determined appropriate, ordered to receive psychiatric or psychological counseling or treatment for a length of time prescribed by the court.

(c) A person who pleads guilty or nolo contendere to or is found guilty of aggravated cruelty to a dog, cat, or equine for a subsequent offense occurring within five (5) years from a previous offense of aggravated cruelty to a dog, cat, or equine or of any other equivalent penal offense of another state or foreign jurisdiction is guilty of a Class C felony and shall be:

(1) Ordered to receive a psychiatric or psychological evaluation; and

(2) If determined appropriate, ordered to receive psychiatric or psychological counseling or treatment for a length of time prescribed by the court.

(d) The cost of any psychiatric or psychological evaluation, counseling, or treatment ordered under this section shall be paid by the person ordered to receive the psychiatric or psychological evaluation, counseling, or treatment.

(e) For purposes of this section, each alleged act of the offense of aggravated cruelty to a dog, cat, or equine committed against more than one (1) dog, cat, or equine may constitute a separate offense.

(f)(1) For the sole purpose of calculating the number of previous offenses under subsection (b) of this section, all offenses of aggravated cruelty to a dog, cat, or equine that are committed against one (1) or more dogs, cats, or equines, as part of the same criminal episode are a single offense.

(2) As used in this section, "criminal episode" means an act that constitutes the offense of aggravated cruelty to a dog, cat, or equine,

committed by a person against one (1) or more dogs, cats, or equines within a period of twenty-four (24) hours.

History. Acts 2009, No. 33, § 3; 2017, No. 389, § 3.

Amendments. The 2017 amendment substituted "equine — Definition" for "horse" in the section heading; and substituted "equine" and "equines" for "horse" and "horses" throughout the section.

5-62-105. Exemptions.

(a) This subchapter does not prohibit any of the following activities:

(1) Reasonably acting to protect a person or a person's property from damage;

(2) Injuring or humanely killing an animal on the property of a person if the person is acting as a reasonable person would act under similar circumstances and if the animal is reasonably believed to constitute a threat of physical injury or damage to any animal under the care or control of the person;

(3) Engaging in practices lawful under the Arkansas Veterinary Medical Practice Act, § 17-101-101 et seq., or engaging in activities by or at the direction of any licensed veterinarian while following accepted standards of practice of the profession, including the euthanizing of an animal;

(4) Rendering emergency care, treatment, or assistance, including humanely killing an animal, that is abandoned, ill, injured, or in distress related to an accident or disaster, or where there appears to be no reasonable probability that the life or usefulness of the animal can be saved, if the person rendering the emergency care, treatment, or assistance is:

(A) Acting in good faith;

(B) Not receiving compensation; and

(C) Acting as a reasonable person would act under similar circumstances;

(5) Performing generally accepted animal husbandry practices;

(6) Performing professional pest control activities in a lawful manner;

(7) Performing generally accepted training for or participating in a rodeo, equine activity, or competitive activity;

(8) Engaging in generally accepted practices of animal identification;

(9) Engaging in the taking of game or fish through hunting, trapping, or fishing, or engaging in any other activity authorized by Arkansas Constitution, Amendment 35, by § 15-41-101 et seq., or by any Arkansas State Game and Fish Commission regulation or rule promulgated under either Arkansas Constitution, Amendment 35, or statute;

(10) Conducting activities undertaken by research and education facilities or institutions that are:

(A) Regulated under the Animal Welfare Act, 7 U.S.C. § 2131 et seq., as in effect on January 1, 2009;

(B) Regulated under the Health Research Extension Act of 1985, Pub. L. No. 99-158; or

(C) Subject to any federal law or regulation governing animal research that is in effect on January 1, 2009; and

(11) Applying generally accepted methods used to train dogs engaged in hunting, field trials, service work, obedience training, or any similar activities authorized by the Arkansas State Game and Fish Commission.

(b) In addition to the exemptions in subsection (a) of this section, this subchapter does not prohibit a person from engaging in or performing conduct that is otherwise permitted under the laws of this state or of the United States, including without limitation agricultural activities, butchering, food processing, marketing, medical activities, zoological activities, or exhibitions.

History. Acts 2009, No. 33, § 3; 2019, No. 315, § 156.

Amendments. The 2019 amendment inserted "or rule" in (a)(9).

5-62-106. Disposition of animal.

(a)(1) Unless otherwise ordered by a court, for purposes of this subchapter, an animal that has been seized by a law enforcement officer or animal control officer under this subchapter shall remain at the appropriate place of custody for a period of at least fifteen (15) consecutive days, including weekends and holidays, after written notice is received by the owner.

(2) The written notice shall:

(A) Be left at the last known address of the owner; and

(B) Contain a description of the animal seized, the date seized, the name and contact information of the law enforcement or animal control officer seizing the animal, the location of the animal, and the reason for the seizure.

(3) If the owner of the animal cannot be determined, a written notice regarding the seizure of the animal shall be conspicuously posted where the animal is seized at the time the seizure occurs if practicable and a notice shall be published in a local newspaper of general circulation in the jurisdiction where the animal was seized at least two (2) times each week for two (2) consecutive weeks, with the first notice published within three (3) days of the seizure, and no less than at least five (5) days before a hearing conducted under this section.

(4)(A) After written notice is received by the owner or published under subdivision (a)(3) of this section, the owner within fifteen (15) business days may petition the district court having jurisdiction where the animal was seized to determine the custody of the animal.

(B) If a petition is not filed by the owner within the time period prescribed by this section, the prosecuting attorney shall file a petition in the district court to divest the owner of ownership of the animal and, after a hearing, the district court may order the animal transferred to an appropriate place of custody, euthanized, or any other disposition the district court deems appropriate.

(b)(1)(A) When an owner files a petition under subsection (a) of this section and the district court determines that the owner shall be

divested of custody of the animal, the district court shall order the owner of the animal to post a bond with the district court in an amount the district court determines is sufficient to care for the animal for at least thirty (30) days.

(B) The bond shall not prevent the appropriate place of custody from disposing of the animal at the end of the thirty-day period covered by the bond, unless a person claiming an interest in the animal posts a new bond for an amount determined by the court for an additional thirty-day period.

(2)(A) If a petition has been filed by the owner of an animal or the prosecuting attorney under subsection (a) of this section, a person claiming an interest in an animal seized may prevent disposition of the animal as provided in subsection (a) of this section by posting a bond with the district court in an amount the district court determines is sufficient to care for the animal for at least thirty (30) days.

(B) If a person who claims an interest in the animal has not posted bond in accordance with subdivision (b)(2)(A) of this section, the district court shall determine final disposition of the animal in accordance with reasonable practices for the humane treatment of animals.

(c)(1) A diseased or injured animal:

(A) Seized under this section may be appropriately treated for injury or disease without a court order; and

(B) Is subject to being euthanized without a court order when it is determined by a licensed veterinarian that euthanizing is necessary to prevent the suffering of the animal.

(2)(A) Except as provided in subdivision (c)(1) of this section, an appropriate place of custody shall not alter or modify an animal in any manner, including without limitation the neutering, spaying, or castration of the animal, without:

(i) A written court order that is issued after a petition is filed by the prosecuting attorney requesting alteration or modification and a hearing involving all interested parties as set forth in subsection (a) of this section; or

(ii) The written consent of the owner.

(B) A violation of this subsection is a Class B misdemeanor.

(d)(1) If a person pleads guilty or nolo contendere to or is found guilty of either the offense of cruelty to animals, § 5-62-103, or the offense of aggravated cruelty to a dog, cat, or equine, § 5-62-104, and if that person is also the owner of the animal subject to the offense, the court shall divest the person of ownership of the animal, and the court shall either:

(A) Order the animal given to an appropriate place of custody;

(B) Order the animal euthanized if the court decides that the best interests of the animal or that the public health and safety would be best served by euthanizing the animal based on the sworn testimony of a licensed veterinarian or animal control officer; or

(C) Make any other disposition the court deems appropriate.

(2) If a person pleads guilty or nolo contendere to or is found guilty of either the offense of cruelty to animals, § 5-62-103, or the offense of aggravated cruelty to a dog, cat, or equine, § 5-62-104, and the person is not the owner of the animal subject to the offense, the court shall order that the animal be returned to the owner, if practicable, or, if not practicable, the court shall either:

(A) Order the animal given to an appropriate place of custody;

(B) Order the animal euthanized if the court decides that the best interests of the animal or that the public health and safety would be best served by euthanizing the animal based on the sworn testimony of a licensed veterinarian or animal control officer; or

(C) Make any other disposition the court deems appropriate.

(e) The court shall order an animal seized under this section returned to the owner if the owner:

(1) Filed a petition under subsection (a) of this section;

(2) Paid all reasonable expenses incurred in caring for the animal; and

(3) Is found not guilty of the offense of cruelty to animals, § 5-62-103, or the offense of aggravated cruelty to a dog, cat, or equine, § 5-62-104, or the proceedings against the owner have otherwise terminated.

(f) An owner of an animal that has been seized under this subchapter shall be responsible only for reasonable expenses that were incurred for the care of the animal while the animal was in the appropriate place of custody.

(g) This section does not prohibit the return of an animal to the rightful owner if the rightful owner is located outside the state and the prosecuting attorney has decided not to charge the rightful owner with an offense under this subchapter.

History. Acts 2009, No. 33, § 3; 2013, No. 1160, § 1; 2013, No. 1175, § 2; 2017, No. 389, § 4.

Amendments. The 2017 amendment substituted "equine" for "horse" throughout (d) and (e); and inserted "subject to the offense" in the introductory language of (d)(1) and (d)(2).

5-62-107. Immunity for reporting cruelty to animals or aggravated cruelty to a dog, cat, or equine.

Except as provided in § 5-54-122, a person who in good faith reports a suspected incident of cruelty to animals, § 5-62-103, or aggravated cruelty to a dog, cat, or equine, § 5-62-104, to a local law enforcement agency or to the Division of Arkansas State Police is immune from civil and criminal liability for reporting the incident.

History. Acts 2009, No. 33, § 3; 2017, No. 389, § 5.

Amendments. The 2017 amendment substituted "equine" for "horse" in the section heading and in the section.

5-62-111. Prevention of cruelty.

(a) A person may lawfully interfere to prevent the imminent or ongoing perpetration of any offense of cruelty to animals, § 5-62-103, or aggravated cruelty to a dog, cat, or equine, § 5-62-104, upon any animal in his or her presence.

(b) Upon a conviction, a person who knowingly interferes with or obstructs a person acting under subsection (a) of this section is guilty of a Class A misdemeanor.

History. Acts 1879, No. 47, § 10, p. 54; C. & M. Dig., § 2619; Pope's Dig., § 3306; A.S.A. 1947, § 41-2957; Acts 2009, No. 33, § 4; 2017, No. 389, § 6.

Amendments. The 2017 amendment substituted "equine" for "horse" in (a).

5-62-116. Diseased animals — Sale.

(a) Upon conviction, a person who knowingly sells or offers for sale, or uses, or exposes, or causes or procures to be sold or offered for sale, or used, or to be exposed, any equine or other animal having the disease known as "glanders" or "farcy" or any other contagious or infectious disease known to the person to be dangerous to human life, or that is diseased past recovery, is guilty of a Class A misdemeanor.

(b)(1) Upon discovery or knowledge of the animal's condition, any animal having glanders or farcy shall be humanely killed by the owner or person having charge of the animal, or arrangements shall be made to have the animal euthanized.

(2) Upon conviction, an owner or person having charge of the animal and knowingly omitting or refusing to comply with this section is guilty of a Class A misdemeanor.

History. Acts 1879, No. 47, §§ 7, 8, 11, p. 54; C. & M. Dig., §§ 2616, 2617, 2620; Pope's Dig., §§ 3303, 3304, 3307; A.S.A. 1947, §§ 41-2958, 41-3757, 41-3758; Acts 2009, No. 33, § 4; 2017, No. 389, § 7.

Amendments. The 2017 amendment substituted "equine" for "horse" in (a).

5-62-126. Acts of God — Emergency conditions.

An owner of an animal or person in control of an animal is not guilty of either the offense of cruelty to animals, § 5-62-103, or the offense of aggravated cruelty to a dog, cat, or equine, § 5-62-104, if the owner of the animal or the person in control of the animal was reasonably precluded as the result of an act of God or emergency conditions from engaging in an act or omission that might prevent an allegation of the offense of cruelty to animals, § 5-62-103, or the offense of aggravated cruelty to a dog, cat, or equine, § 5-62-104.

History. Acts 2009, No. 33, § 8; 2017, No. 389, § 8.

Amendments. The 2017 amendment substituted "equine" for "horse" twice.

CHAPTER 63

BUSINESS MISCONDUCT

SUBCHAPTER.

2. Offenses Generally.

Subchapter 2 — Offenses Generally

SECTION.

5-63-204. Automated telephone solicitation.

5-63-205. Misleading caller identification information — Exemptions — Penalties.

Effective Dates. Acts 2019, No. 1074, § 3: Apr. 16, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the practice of illegal robocalls from telemarketers and from others seeking to perpetrate scams on the public to mislead and defraud the public is growing; that addressing misleading and fraudulent spoofing of telephone calls will protect the lives, health, and welfare of the state's residents; and that this act is immediately necessary because the Arkansas Public Service Commission should be immediately authorized to adopt and implement appropriate rules as provided in this act. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

5-63-201. Tickets to certain events — Sale in excess of regular price.

RESEARCH REFERENCES

Ark. L. Rev. Rachel A. Orr, Recent Developments: Selling Music Entertainment Tickets for More Than Face Value Violates Arkansas Law, 65 Ark. L. Rev. 517 (2012).

5-63-204. Automated telephone solicitation.

(a)(1) It is unlawful for any person to use a telephone for the purpose of offering any goods or services for sale, or for conveying information regarding any goods or services for the purpose of soliciting the sale or purchase of the goods or services when the use involves an automated system for the selection and dialing of telephone numbers and the playing of recorded messages when a message is completed to the called number.

(2) However, nothing in this section prohibits the use of:

(A) A telephone involving an automated system for the selection and dialing of telephone numbers and the play of recorded messages to:

(i) Inform the purchaser of the goods or services concerning receipt and availability of the goods or services for delivery to the purchaser; or

(ii) Convey information concerning any delay or pertinent information about the current status of any purchase order previously made; or

(B) An automated telephone system with a recorded message when the call is made or message given solely in response to a call initiated by the person to which the automatic call or recorded message is directed.

(b) A person who violates this section upon conviction is guilty of a Class D felony.

(c)(1) The Attorney General, a prosecuting attorney, any law enforcement officer, or any telephone company serving an area from which automated telephone calls are made may seek injunctive relief to enforce the provision of this section.

(2) If a civil action is filed pursuant to this section, the prevailing party is entitled to a reasonable attorney's fee and court costs.

History. Acts 1981, No. 947, §§ 1-3; A.S.A. 1947, §§ 41-4162 — 41-4164; Acts 2019, No. 677, §§ 6, 7.

A.C.R.C. Notes. Acts 2019, No. 677, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) The citizens of this state are being negatively affected by illegal robocalls from telemarketers and from others seeking to perpetrate scams on them;

"(2) While these illegal robocalls are frustrating for most, the robocalls are costly and dangerous for far too many Arkansans;

"(3) An alarming number of illegal robocalls originate from scammers using automatic telephone dialing systems to send out thousands of phone calls per minute with fictitious or misleading names or telephone numbers displaying on unsuspecting consumers' telephone caller identification service;

"(4) These scammers are engaging in insidious schemes and targeting seniors and other vulnerable groups by soliciting personal information such as credit or debit card information and Social security numbers;

"(5) Displaying fictitious or misleading names or telephone numbers, or 'spoofing', is the predominant means by which a robocaller protects their identities and entices consumers to answer the telephone; and

"(6) Spoofing is the gateway for illegal robocalls and scams.

"(b) It is the intent of the General Assembly:

"(1) To protect the citizens of this state from being spoofed by receiving illegal robocalls from telemarketers and from others seeking to perpetrate scams on unsuspecting or vulnerable citizens;

"(2) To provide the citizens of this state who use a caller identification service with accurate information about the identities and locations of callers;

"(3) To encourage telecommunications providers to swiftly implement technologies that will allow telecommunications providers to identify and stop illegal calling practices; and

"(4) That this act be construed as broadly as possible to ensure that the citizens of this state are protected from the negative impact of illegal robocalls and to ensure that scammers and complicit telecommunications providers are held criminally accountable."

Amendments. The 2019 amendment, in (a)(1), deleted "or for soliciting informa-

tion, gathering data, or for any other purpose in connection with a political campaign" following the third occurrence of "services"; in (b), substituted "Class D felony" for "Class B misdemeanor and shall be punished accordingly"; and made stylistic changes.

RESEARCH REFERENCES

ALR. Construction and Application of Reed v. Town of Gilbert, Ariz., Providing That Speech Regulation Targeted at Specific Subject Matter Is Content-Based Even If It Does Not Discriminate Among Viewpoints Within that Subject Matter. 24 A.L.R.7th Art. 6 (2017).

Validity Under First Amendment of Statutes Limiting Automatic Dialing and Announcing Device (ADAD) and Robocalls. 48 A.L.R.7th Art. 1 (2020).

U. Ark. Little Rock L. Rev. Caleb J. Norris, Note: First Amendment and Freedom of Speech — The Constitutionality of Arkansas's Prohibition on Political Robocalls, 34 U. Ark. Little Rock L. Rev. 797 (2012).

5-63-205. Misleading caller identification information — Exemptions — Penalties.

(a) It is unlawful for a person, in connection with a telecommunications service, to cause a caller identification service to transmit misleading or inaccurate caller identification information if the purpose is to defraud, cause harm, or wrongfully obtain anything of value.

(b) It is unlawful for a person, in connection with a telecommunications service, to cause a caller identification service to transmit misleading or inaccurate caller identification information unless the person has verified that the caller has a right to use the name and the phone number displayed.

(c) It is unlawful for a telecommunications service to permit or cause a caller identification service or device to display the name or telephone number of the recipient.

(d) It is unlawful for a person to use a third party to display or cause to be displayed a fictitious or misleading name or telephone number on an Arkansas resident's telephone caller identification service for any purpose.

(e) This section does not prohibit:

(1) An authorized activity of a law enforcement agency;

(2) Any investigative, protective, or intelligence activity of a law enforcement agency, including a law enforcement agency of the United States, another state, or a political subdivision of another state, an intelligence agency of the United States, or a protective services shelter or facility, including without limitation a domestic violence shelter, from transmitting or causing to be transmitted, an inaccurate telecommunications number;

(3) A telecommunications service from blocking or restricting the name or phone number from being displayed by caller identification equipment or devices;

(4) Any activity pursuant to a court order that specifically authorizes the use of caller identification manipulation; or

(5) A telecommunications provider or other person from transmitting or causing to be transmitted an inaccurate telecommunications telephone number for a legitimate business purpose.

(f) This section does not apply to a telecommunications provider that complies with § 23-17-122.

(g) A violation of this section is a Class D felony.

History. Acts 2019, No. 677, § 8; 2019, No. 1074, § 1.

A.C.R.C. Notes. Acts 2019, No. 677, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) The citizens of this state are being negatively affected by illegal robocalls from telemarketers and from others seeking to perpetrate scams on them;

"(2) While these illegal robocalls are frustrating for most, the robocalls are costly and dangerous for far too many Arkansans;

"(3) An alarming number of illegal robocalls originate from scammers using automatic telephone dialing systems to send out thousands of phone calls per minute with fictitious or misleading names or telephone numbers displaying on unsuspecting consumers' telephone caller identification service;

"(4) These scammers are engaging in insidious schemes and targeting seniors and other vulnerable groups by soliciting personal information such as credit or debit card information and Social security numbers;

"(5) Displaying fictitious or misleading names or telephone numbers, or 'spoofing', is the predominant means by which a robocaller protects their identities and entices consumers to answer the telephone; and

"(6) Spoofing is the gateway for illegal robocalls and scams.

"(b) It is the intent of the General Assembly:

"(1) To protect the citizens of this state from being spoofed by receiving illegal robocalls from telemarketers and from others seeking to perpetrate scams on unsuspecting or vulnerable citizens;

"(2) To provide the citizens of this state who use a caller identification service with accurate information about the identities and locations of callers;

"(3) To encourage telecommunications providers to swiftly implement technologies that will allow telecommunications providers to identify and stop illegal calling practices; and

"(4) That this act be construed as broadly as possible to ensure that the citizens of this state are protected from the negative impact of illegal robocalls and to ensure that scammers and complicit telecommunications providers are held criminally accountable."

Amendments. The 2019 amendment by No. 1074 added (e)(5) and (f) and redesignated former (f) as (g).

CHAPTER 64

CONTROLLED SUBSTANCES

SUBCHAPTER.

1. Uniform Controlled Substances Act — Definitions.
2. Uniform Controlled Substances Act — Designation of Controlled Substances.
3. Uniform Controlled Substances Act — Regulation of Distribution.
4. Uniform Controlled Substances Act — Prohibitions and Penalties.
5. Uniform Controlled Substances Act — Enforcement and Administration.
7. Provisions Relating to the Uniform Controlled Substances Act.
10. Records of Transactions.
13. Anhydrous Ammonia.

RESEARCH REFERENCES

ALR. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 19, 1988, 1582 U.N.T.S. 95, 28 I.L.M. 493 (1989). 35 A.L.R. Fed. 3d Art. 6 (2018).

Subchapter 1 — Uniform Controlled Substances Act — Definitions

SECTION.

5-64-101. Definitions.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

5-64-101. Definitions.

As used in this chapter:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject by:

(A) A practitioner; or

(B) The patient or research subject at the direction and in the presence of the practitioner;

(2)(A) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser.

(B) "Agent" does not include a common or contract carrier, public warehouseman, or employee of the common or contract carrier or warehouseman;

(3)(A) "Anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestin, and corticosteroid that promotes muscle growth.

(B)(i) "Anabolic steroid" does not include an anabolic steroid that is expressly intended for administration through an implant to cattle or another nonhuman species and that has been approved by the Secretary of the Department of Health for such administration.

(ii) If any person prescribes, dispenses, or distributes a steroid described in subdivision (3)(B)(i) of this section for human use, the person is considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision (3);

(4) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through VI;

(5)(A) "Counterfeit substance" means a noncontrolled substance, that by overall dosage unit appearance including color, shape, size, markings, packaging, labeling, and overall appearance or upon the basis of representations made to the recipient, purports to be a controlled substance or to have the physical or psychological effect associated with a controlled substance.

(B) In determining whether a substance is a "counterfeit substance", the following factors shall be utilized and a finding of any two (2) of these factors constitutes prima facie evidence that the substance is a "counterfeit substance":

(i) A statement made by an owner or by anyone else in control of the substance concerning the nature of the substance, its use, or effect;

(ii) The physical appearance of the finished product containing the noncontrolled substance is substantially the same as that of a specific controlled substance;

(iii) The noncontrolled substance is unpackaged or is packaged in a manner normally used for the illegal delivery of a controlled substance;

(iv) The noncontrolled substance is not labeled in accordance with 21 U.S.C. § 352 or 21 U.S.C. § 353;

(v) The person delivering, attempting to deliver, or causing delivery of the noncontrolled substance states or represents to the recipient that the noncontrolled substance may be resold at a price that substantially exceeds the value of the substance;

(vi) An evasive tactic or action utilized by the owner or person in control of the substance to avoid detection by a law enforcement authority; or

(vii) A prior conviction, if any, of an owner, or anyone in control of the object under a state or federal law related to a controlled substance or fraud;

(6) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one (1) person to another of a controlled substance or counterfeit substance in exchange for money or anything of value, whether or not there is an agency relationship;

(7) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the controlled substance for that delivery;

(8) "Dispenser" means a practitioner who dispenses;

(9) "Distribute" means to deliver other than by administering or dispensing a controlled substance;

(10) "Distributor" means a person who distributes;

(11)(A) "Drug" means a substance:

(i) Recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them;

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(iii) Other than food intended to affect the structure or any function of the body of humans or animals; and

(iv) Intended for use as a component of any article specified in subdivision (11)(A)(i), subdivision (11)(A)(ii), or subdivision (11)(A)(iii) of this section.

(B) "Drug" does not include a device or its components, parts, or accessories;

(12)(A) "Drug paraphernalia" means any equipment, product, and material of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter.

(B) "Drug paraphernalia" includes, but is not limited to:

(i) A kit used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting any species of plant that is a controlled substance or from which a controlled substance can be derived;

(ii) A kit used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(iii) An isomerization device used, intended for use, or designed for use in increasing the potency of any species of plant that is a controlled substance;

(iv) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance;

(v) A scale or balance used, intended for use, or designed for use in weighing or measuring a controlled substance;

(vi) A diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose used, intended for use, or designed for use in cutting a controlled substance;

(vii) A separation gin or sifter used, intended for use, or designed for use in removing a twig or seed from, or in otherwise cleaning or refining, marijuana;

(viii) A blender, bowl, container, spoon, or mixing device used, intended for use, or designed for use in compounding a controlled substance;

(ix) A capsule, balloon, envelope, or other container used, intended for use, or designed for use in packaging a small quantity of a controlled substance;

(x) A container or other object used, intended for use, or designed for use in storing or concealing a controlled substance;

(xi) A hypodermic syringe, needle, or other object used, intended for use, or designed for use in parenterally injecting a controlled substance into the human body; and

(xii) An object used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing a controlled substance into the human body, such as:

(a) A metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

(b) A water pipe;

(c) A carburetion tube or device;

(d) A smoking or carburetion mask;

(e) A roach clip, meaning an object used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;

(f) A miniature cocaine spoon or cocaine vial;

(g) A chamber pipe;

(h) A carburetor pipe;

(i) An electric pipe;

(j) An air-driven pipe;

(k) A chillum;

(l) A bong;

(m) An ice pipe or chiller; and

(n) An aluminum foil boat.

(C) In determining whether an object is "drug paraphernalia", a court or other authority shall consider, in addition to any other logically relevant factor, the following:

(i) A statement by an owner or by anyone in control of the object concerning its use;

(ii) A prior conviction, if any, of an owner or of anyone in control of the object under any state or federal law relating to any controlled substance;

(iii) The proximity of the object in time and space to a direct violation of this chapter;

(iv) The proximity of the object to a controlled substance;

(v) The existence of any residue of a controlled substance on the object;

(vi)*(a)* Direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to a person whom he or she knows, or should reasonably know, intends to use the object to facilitate a violation of this chapter.

(b) The innocence of an owner or of anyone in control of the object as to a direct violation of this chapter does not prevent a finding that

the object is intended for use or designed for use as "drug paraphernalia";

(vii) An oral or written instruction provided with the object concerning its use;

(viii) Descriptive materials accompanying the object that explain or depict its use;

(ix) National and local advertising concerning the object's use;

(x) The manner in which the object is displayed for sale;

(xi) Whether the owner or anyone in control of the object is a legitimate supplier of a like or related item to the community, such as a licensed distributor or dealer of a tobacco product;

(xii) Direct or circumstantial evidence of the ratio of sales of the objects to the total sales of the business enterprise;

(xiii) The existence and scope of legitimate uses for the object in the community; and

(xiv) Expert testimony concerning the object's use;

(13) "Fentanyl" means the opioid known as fentanyl, an analog of fentanyl that is a fentanyl-related controlled substance, and any chemical structure modification to fentanyl or a fentanyl analog, including without limitation the isomers, esters, ethers, and salts of fentanyl;

(14) "Immediate precursor" means a substance that the secretary has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture;

(15)(A) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from a substance of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(B) "Manufacture" includes any packaging or repackaging of a controlled substance or labeling or relabeling of a controlled substance's container.

(C) However, "manufacture" does not include the preparation or compounding of a controlled substance by an individual for his or her own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(i) By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice; or

(ii) By a practitioner or by his or her authorized agent under his or her supervision for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(16)(A) "Marijuana" means:

(i) Any part and any variety or species, or both, of the Cannabis plant that contains THC (Tetrahydrocannabinol) whether growing or not;

(ii) The seeds of the plant;

(iii) The resin extracted from any part of the plant; and

(iv) Every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.

(B) "Marijuana" does not include:

(i) The mature stalks of the plant;

(ii) Fiber produced from the stalks;

(iii) Oil or cake made from the seeds of the plant;

(iv) Any other compound, manufacture, salt, derivative, mixture, or preparation of the:

(a) Mature stalks, except the resin extracted from the mature stalks;

(b) Fiber;

(c) Oil; or

(d) Cake;

(v) The sterilized seed of the plant that is incapable of germination; or

(vi) Hemp-derived cannabidiol that:

(a) Contains not more than three-tenths of one percent (0.3%) of tetrahydrocannabinol (THC) on a dry weight basis as verified by a nationally accredited laboratory for quality, purity, and accuracy standards; and

(b) Is not approved by the United States Food and Drug Administration for marketing as a medication;

(17)(A)(i) "Narcotic drug" means any drug that is defined as a narcotic drug by order of the secretary.

(ii) In the formulation of a definition of "narcotic drug", the secretary shall:

(a) Include any drug that he or she finds is narcotic in character and by reason of being narcotic is dangerous to the public health or is promotive of addiction-forming or addiction-sustaining results upon the user that threaten harm to the public health, safety, or morals; and

(b) Take into consideration the provisions of the federal narcotic laws as they exist from time to time and shall amend the definitions so as to keep them in harmony with the definitions prescribed by the federal narcotic laws, so far as is possible under the standards established in this subdivision (17) and under the policy of this chapter.

(B) "Narcotic drug" also means any of the following, whether produced directly or indirectly by extraction from a substance of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(i)*(a)* Opium, opiates, a derivative of opium or opiates, including their isomers, esters, and ethers whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(b) "Narcotic drug" does not include an isoquinoline alkaloid of opium;

(ii) Poppy straw and concentrate of poppy straw;

(iii) Coca leaves, except coca leaves and extracts of coca leaves from which cocaines, ecgonine, and derivatives of ecgonine or their salts have been removed;

(iv) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(v) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(vi) Any compound, mixture, or preparation that contains any quantity of any substance referred to in subdivisions (17)(B)(i)-(v) of this section;

(18) "Noncontrolled substance" means any liquid, substance, or material not listed in Schedules I through VI of the Schedules of Controlled Substances promulgated by the secretary;

(19) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;

(20) "Practitioner" means:

(A) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state; and

(B) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state;

(21) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;

(22) "State" when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America; and

(23) "Ultimate user" means a person who lawfully possesses a controlled substance for:

(A) The person's own use;

(B) The use of a member of the person's household; or

(C) Administering to an animal owned by the person or by a member of his or her household.

History. Acts 1971, No. 590, Art. 1, § 1; 1975, No. 243, § 1; 1975, No. 305, § 1; 1979, No. 898, §§ 1, 2; 1981, No. 78, § 1; 1981, No. 116, § 1; 1983, No. 787, §§ 1, 2; A.S.A. 1947, § 82-2601; Acts 1987, No. 42, § 2; 1991, No. 570, § 1; 1995, No. 1296, § 7; 2005, No. 1994, § 301; 2007, No. 199, § 1; 2007, No. 827, §§ 52-55; 2019, No. 504, § 1; 2019, No. 910, § 4830; 2021, No. 887, § 1.

Amendments. The 2019 amendment by No. 504 added (15)(B)(vi).

The 2019 amendment by No. 910 substituted "Secretary" for "Director" in (3)(B)(i).

The 2021 amendment added the definition for "Fentanyl".

CASE NOTES

Deliver or Delivery.

Trial court did not err in allowing the director of the drug task force to testify that drugs constituted something of value because it was appropriate rebuttal testimony as defendant denied taking any money but conceded he received a fraction of the drugs as payment; despite defendant's entrapment defense, the State was never relieved of its burden to prove that defendant facilitated the transaction in exchange for money or something of value beyond a reasonable doubt. Owens v. State, 2017 Ark. App. 109, 515 S.W.3d 625 (2017).

Evidence that defendant arranged the price and the location for the buy, combined with defendant's admission that he was a drug dealer and testimony about his method of operation, was substantial evidence that defendant constructively delivered methamphetamine, for purposes of his continuing criminal enterprise conviction. Hunter v. State, 2017 Ark. App. 256, 522 S.W.3d 793 (2017).

Cited: Payne v. State, 2017 Ark. App. 263, 520 S.W.3d 719 (2017).

Subchapter 2 — Uniform Controlled Substances Act — Designation of Controlled Substances

SECTION.
5-64-201. Secretary's duties.
5-64-203. Criteria for Schedule I.
5-64-204. Substances in Schedule I.
5-64-205. Criteria for Schedule II.
5-64-207. Criteria for Schedule III.
5-64-209. Criteria for Schedule IV.
5-64-211. Criteria for Schedule V.
5-64-212. Substances in Schedule V.
5-64-214. Criteria for Schedule VI.
5-64-215. Substances in Schedule VI.
5-64-216. Schedule revisions.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

5-64-201. Secretary's duties.

(a)(1)(A)(i) The Secretary of the Department of Health shall administer this chapter and may add a substance to or delete or reschedule any substance enumerated in a schedule under the procedures of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(ii) The secretary may promulgate without action or approval of the State Board of Health an emergency rule under the procedures of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., that

adds a substance to or deletes a substance from a schedule or reschedules a substance.

(iii) If the secretary adds, deletes, or reschedules a substance through an emergency rule under the procedures of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the emergency rule may be effective for no longer than one hundred eighty (180) days.

(B) However, the secretary shall not delete any substance from a schedule in effect on July 20, 1979, without prior approval by the Legislative Council.

(2) In making a determination regarding a substance, the secretary shall consider the following:

(A) The actual or relative potential for abuse;

(B) The scientific evidence of its pharmacological effect, if known;

(C) The state of current scientific knowledge regarding the substance;

(D) The history and current pattern of abuse;

(E) The scope, duration, and significance of abuse;

(F) The risk to public health;

(G) The potential of the substance to produce psychic or physiological dependence liability; and

(H) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

(b) After considering the factors enumerated in subsection (a) of this section, the secretary shall make findings with respect to the factors and issue a rule controlling the substance if he or she finds the substance has a potential for abuse.

(c) If the secretary designates a substance as an immediate precursor, a substance that is a precursor of the controlled precursor is not subject to control solely because it is a precursor of the controlled precursor.

(d)(1) If any substance is designated as a controlled substance under federal law and notice of the designation is given to the secretary, the secretary shall similarly control the substance under this chapter after the expiration of thirty (30) days from publication in the Federal Register of a final order designating a substance as a controlled substance unless within that thirty-day period the secretary objects to inclusion.

(2)(A) If the secretary objects to inclusion, the secretary shall publish the reasons for objection and afford any interested party an opportunity to be heard.

(B) At the conclusion of the hearing, the secretary shall publish his or her decision.

(C) Any person aggrieved by a decision of the secretary is entitled to judicial review in the Pulaski County Circuit Court.

(3) Upon publication of objection to inclusion under this chapter by the secretary, control under this chapter is stayed until the secretary publishes his or her decision or, if judicial review is sought, the inclusion is stayed until adjudication of the judicial review.

(4) If notice has been given to the secretary that the United States Food and Drug Administration has designated, rescheduled, or descheduled a marijuana-derived substance under federal law and approved for marketing the marijuana-derived substance as a prescription medication, the secretary shall consider the designation, rescheduling, or descheduling of the marijuana-derived substance under this chapter.

(e) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco.

(f) The secretary shall schedule gamma-hydroxybutyrate and its known precursors and analogs in a manner consistent with the procedures outlined in this section.

History. Acts 1971, No. 590, Art. 2, § 1; 1973, No. 186, § 1; 1979, No. 898, § 3; A.S.A. 1947, § 82-2602; Acts 2001, No. 320, § 2; 2005, No. 1994, § 302; 2011, No. 587, § 1; 2017, No. 440, § 1; 2019, No. 910, § 4831.

Amendments. The 2017 amendment added (d)(4).

The 2019 amendment substituted "Secretary's" for "Director's" in the section heading; substituted "Secretary" for "Director" in (a)(1)(A)(i); and substituted "secretary" for "director" throughout the section.

5-64-203. Criteria for Schedule I.

The Secretary of the Department of Health shall place a substance in Schedule I if he or she finds that the substance has:

(1) High potential for abuse; and

(2) No accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

History. Acts 1971, No. 590, Art. 2, § 3; 1973, No. 186, § 1; 1979, No. 898, § 5; A.S.A. 1947, § 82-2604; Acts 2019, No. 910, § 4832.

Amendments. The 2019 amendment substituted "Secretary" for "Director" in the introductory language.

5-64-204. Substances in Schedule I.

(a) In addition to any substance placed in Schedule I by the Secretary of the Department of Health under § 5-64-203, any material, compound, mixture, or preparation, whether produced directly or indirectly from a substance of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, that contains any quantity of the following substances, or that contains any of the following substances' analogs, salts, isomers, and salts of isomers when the existence of the analogs, salts, isomers, and salts of isomers is possible within the specific chemical designation, with the following chemical structure is included in Schedule I:

(1) 4-Methylmethcathinone (Mephedrone);

(2) Methylenedioxypyrovalerone (MDPV);

(3) 3,4-Methylenedioxy-N-methylcathinone (Methylone);

(4) 4-Methoxymethcathinone;

(5) 3-Fluoromethcathinone;

(6) 4-Fluoromethcathinone; or

(7) A compound, unless listed in another schedule or a legend drug, that is structurally derived from 2-Amino-1-phenyl-1-propanone by modification or by substitution:

(A) In the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl or halide substituents, whether or not further substituted in the phenyl ring by one (1) or more other univalent substituents;

(B) At the 3-position with an alkyl substituent; or

(C) At the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure.

(b) The Secretary of the Department of Health shall not delete a controlled substance listed in this section from Schedule I.

History. Acts 2011, No. 751, § 1; 2019, No. 910, § 4833.

Amendments. The 2019 amendment substituted "Secretary" for "Director" in the introductory language of (a) and in (b).

5-64-205. Criteria for Schedule II.

The Secretary of the Department of Health shall place a substance in Schedule II if he or she finds that:

(1) The substance has high potential for abuse;

(2) The substance has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and

(3) The abuse of the substance may lead to severe psychic or physical dependence.

History. Acts 1971, No. 590, Art. 2, § 5; 1973, No. 186, § 1; 1979, No. 898, § 6; A.S.A. 1947, § 82-2606; Acts 2019, No. 910, § 4834.

Amendments. The 2019 amendment substituted "Secretary" for "Director" in the introductory language.

5-64-207. Criteria for Schedule III.

The Secretary of the Department of Health shall place a substance in Schedule III if he or she finds that:

(1) The substance has a potential for abuse less than the substances listed in Schedules I and II;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

History. Acts 1971, No. 590, Art. 2, § 7; 1973, No. 186, § 1; 1979, No. 898, § 7; A.S.A. 1947, § 82-2608; Acts 2019, No. 910, § 4835.

Amendments. The 2019 amendment substituted "Secretary" for "Director" in the introductory language.

5-64-209. Criteria for Schedule IV.

The Secretary of the Department of Health shall place a substance in Schedule IV if he or she finds that:

(1) The substance has a low potential for abuse relative to substances in Schedule III;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

History. Acts 1971, No. 590, Art. 2, § 9; 1973, No. 186, § 1; 1979, No. 898, § 9; A.S.A. 1947, § 82-2610; Acts 2019, No. 910, § 4836.

Amendments. The 2019 amendment substituted "Secretary" for "Director" in the introductory language.

5-64-211. Criteria for Schedule V.

The Secretary of the Department of Health shall place a substance in Schedule V if he or she finds that:

(1) The substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

History. Acts 1971, No. 590, Art. 2, § 11; 1973, No. 186, § 1; 1979, No. 898, § 11; A.S.A. 1947, § 82-2612; Acts 2019, No. 910, § 4837.

Amendments. The 2019 amendment substituted "Secretary" for "Director" in the introductory language.

5-64-212. Substances in Schedule V.

(a) An ephedrine combination product, pseudoephedrine, and phenylpropanolamine, as defined in § 5-64-1105, are designated Schedule V controlled substances in addition to the drugs and other substances listed in Schedule V of the List of Controlled Substances for the State of Arkansas promulgated by the Secretary of the Department of Health.

(b) The Schedule V classification does not apply to:

(1) An exempt product described in § 5-64-1103(b)(1); or

(2) Any ephedrine or pseudoephedrine in liquid, liquid capsule, or liquid gel capsule form described in § 5-64-1103(b)(2).

(c) The secretary may reschedule a product described in subdivision (b)(1) or subdivision (b)(2) of this section if it is determined that the conversion of the active ingredient in the product into methamphetamine or its salts or precursors is feasible.

(d) A wholesale distributor with exclusive rights to distribute pseudoephedrine to only licensed pharmacies is exempt from Schedule V requirements for the storage and distribution of pseudoephedrine.

History. Acts 2005, No. 256, § 2; 2011, No. 588, § 1; 2019, No. 910, §§ 4838, 4839.

Amendments. The 2019 amendment substituted "Secretary" for "Director" in (a); and substituted "secretary" for "director" in (c).

5-64-214. Criteria for Schedule VI.

The Secretary of the Department of Health shall place a substance in Schedule VI if he or she finds that:

(1) The substance is not currently accepted for medical use in treatment in the United States;

(2) There is lack of accepted safety for use of the drug or other substance even under direct medical supervision;

(3) The substance has relatively high psychological or physiological dependence liability, or both; and

(4) Use of the substance presents a definite risk to public health.

History. Acts 1971, No. 590, Art. 2, § 14, as added by Acts 1973, No. 186, § 1; 1979, No. 898, § 12; A.S.A. 1947, § 82-2614.1; Acts 2007, No. 827, § 56; 2019, No. 910, § 4840.

Amendments. The 2019 amendment substituted "Secretary" for "Director" in the introductory language.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Andrew Payne Norwood, Note: When Apples Taste Like Oranges, You Cannot Judge a Book by Its Cover: How to Fight Emerging Synthetic "Designer" Drugs of Abuse, 39 U. Ark. Little Rock L. Rev. 323 (2017).

5-64-215. Substances in Schedule VI.

(a) In addition to any substance placed in Schedule VI by the Secretary of the Department of Health under § 5-64-214, any material, compound, mixture, or preparation, whether produced directly or indirectly from a substance of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, that contains any quantity of the following substances, or that contains any of their salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation, is included in Schedule VI:

(1) Marijuana;

(2) Tetrahydrocannabinols, unless the tetrahydrocannabinol is:

(A) Contained in hemp-derived cannabidiol;

(B) Not more than three-tenths of one percent (0.3%) of the hemp-derived cannabidiol on a dry weight basis as verified by a nationally accredited laboratory for quality, purity, and accuracy standards; and

(C) Not approved by the United States Food and Drug Administration for marketing as a medication;

(3) A synthetic equivalent of:

(A) The substance contained in the Cannabis plant; or

(B) The substance contained in the resinous extractives of the genus Cannabis;

(4) Salvia divinorum or Salvinorin A, which includes all parts of the plant presently classified botanically as Salvia divinorum, whether growing or not, the seeds of the plant, any extract from any part of the plant, and every compound, manufacture, derivative, mixture, or preparation of the plant, its seeds, or its extracts, including salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation;

(5) Synthetic substances, derivatives, or their isomers in the chemical structural classes described below in subdivisions (a)(5)(A)-(J) of this section and also specific unclassified substances in subdivision (a)(5)(K) of this section. Compounds of the structures described in this subdivision (a)(5), regardless of numerical designation of atomic positions, are included in this subdivision (a)(5). The synthetic substances, derivatives, or their isomers included in this subdivision (a)(5) are:

(A)(i) Tetrahydrocannabinols, including without limitation the following:

(a) Delta-1 cis or trans tetrahydrocannabinol, and its optical isomers;

(b) Delta-6 cis or trans tetrahydrocannabinol, and its optical isomers; and

(c) Delta-3.4 cis or trans tetrahydrocannabinol, and its optical isomers.

(ii) Dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration is not a tetrahydrocannabinol under this subdivision (a)(5)(A);

(B) Naphthoylindoles, or any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including without limitation the following:

(i) JWH-007, or 1-pentyl-2-methyl-3-(1-naphthoyl)indole;

(ii) JWH-015, or 1-Propyl-2-methyl-3-(1-naphthoyl)indole;

(iii) JWH-018, or 1-Propyl-3-(1-naphthoyl)indole;

(iv) JWH-019, or 1-Hexyl-3-(1-naphthoyl)indole;

(v) JWH-073, or 1-Butyl-3-(1-naphthoyl)indole;

(vi) JWH-081, or 1-Pentyl-3-(4-methoxy-1-naphthoyl)indole;

(vii) JWH-098, or 1-pentyl-2-methyl-3-(4-methoxy-1-naphthoyl)indole;

(viii) JWH-122, or 1-Pentyl-3-(4-methyl-1-naphthoyl)indole;

(ix) JWH-164, or 1-pentyl-3-(7-methoxy-1-naphthoyl)indole;

(x) JWH-200, or 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole;

(xi) JWH-210, or 1-Pentyl-3-(4-ethyl-1-naphthoyl)indole;

(xii) JWH-398, or 1-Pentyl-3-(4-chloro-1-naphthoyl)indole;

(xiii) AM-2201, or 1-(5-fluoropentyl)-3-(1-naphthoyl)indole;

(xiv) MAM2201, or (1-(5-fluoropentyl)-1H-indol-3-yl)(4-methyl-1-naphthalenyl)-methanone; and

(xv) EAM2201, or (1-(5-fluoropentyl)-1H-indol-3-yl)(4-ethyl-1-naphthalenyl)-methanone;

(C) Naphthylmethylindoles, or any compound structurally derived from an H-indol-3-yl-(1-naphthyl) methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including without limitation the following:

(i) JWH-175, or 1-Pentyl-1H-indol-3-yl-(1-naphthyl)methane; and

(ii) JWH-184, or 1-Pentyl-1H-3-yl-(4-methyl-1-naphthyl)methane;

(D) Naphthoylpyrroles, or any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl-)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including without limitation JWH-307, or (5-(2-fluorophenyl)-1-pentylpyrrol-3-yl)-naphthalen-1-ylmethanone;

(E) Naphthylmethylindenes, or any compound structurally derived from 1-(1-napthylmethyl)indene with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent, including without limitation JWH-176, or E-1-[1-(1-Naphthalenylmethylene)-1H-inden-3-yl]pentane;

(F) Phenylacetylindoles, or any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent, including without limitation the following:

(i) JWH-201, or 2-(4-methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone;

(ii) JWH-203, or 1-Pentyl-3-(2-chlorophenylacetyl)indole;

(iii) JWH-250, or 1-Pentyl-3-(2-methoxyphenylacetyl)indole;

(iv) JWH-251, or 1-Pentyl-3-(2-methylphenylacetyl)indole; and

(v) RCS-8, or 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole;

(G) Cyclohexylphenols, or any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the

phenolic ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl-)ethyl group, whether or not substituted in the cyclohexyl ring to any extent, including without limitation the following:

(i) CP 47,497 - 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;

(ii) Cannabicyclohexanol or CP 47,497 C8 homologue, or 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol; and

(iii) CP 55,940, or 5-(1,1-dimethylheptyl)-2-[(1R,2R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-phenol;

(H) Benzoylindoles, or any compound structurally derived from a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent, including without limitation the following:

(i) AM-694, or 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole;

(ii) RCS-4, or 1-Pentyl-3-(4-methoxybenzoyl)indole;

(iii) WIN-48,098 or Pravadoline, or (4-Methoxyphenyl)-[2-methyl-1-(2-(4-morpholinyl)ethyl)indol-3-y]methanone;

(iv) AM-2233, or 1-[(N-methylpiperidin-2-yl)methyl]-3-(2-iodobenzoyl)indole; and

(v) RCS-4 (C4 homologue) or (4-methoxyphenyl)(1-butyl-1H-indol-3-yl)-methanone;

(I) Adamantoylindoles, or Adamantoylindazoles, including Adamantyl Carboxamide Indoles and Adamantyl Carboxamide Indazoles, or any compound structurally derived from 3-(1-adamantoyl) indole, 3-(1-adamantoyl) indazole, or 3-(2-adamantoyl)indole by substitution at a nitrogen atom of the indole or indazole ring with alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl) ethyl, whether or not further substituted in the indole or indazole ring to any extent and whether or not substituted in the adamantyl ring to any extent, including without limitation the following:

(i) AM-1248, or 1-adamantyl-[1-[(1-methylpiperidin-2-yl)methyl-]indol-3-yl]methanone;

(ii) AB-001, or 1-adamantyl-(1-pentylindol-3-yl)methanone;

(iii) 2NE1, or 1-pentyl-3-(1-adamantylamido)indole;

(iv) JWH-018 adamantyl carboxamide, or 1-pentyl-N-tricyclo[3.3.1.13,7]dec-1-yl-1H-indole-3-carboxamide;

(v) AKB-48, or N-(1-adamantyl)-pentyl-1H-indazole-3-carboxamide;

(vi) 5F-AKB-48, or N-((3s,5s,7s)-adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide; and

(vii) STS-135, or N-(1-adamantyl)-1-(5-fluoropentyl)indole-3-carboxamide;

(J) Tetramethylcyclopropylcarbonylindoles or any compound structurally derived from 3-(2,2,3,3-tetramethylcyclopropylcarbonyl)

indole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl or 2-(4-morpholinyl) ethyl, whether or not further substituted in the indole ring to any extent, including without limitation the following:

(i) UR-144, or (1-pentylindol-3-yl)-(2,2,3,3-tetramethylcyclopropyl-)methanone;

(ii) XLR-11, or [1-(5-fluoropentyl)-1H-indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone;

(iii) A-796,260, or [1-(2-morpholin-4-yl-ethyl)-1H-indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone;

(iv) 5-Chloro-UR-144, or ([-(5-chloropentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone;

(v) 5-Bromo-UR-144, or [1-(5-bromopentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone; and

(vi) A-834,735, or 1-(tetrahydropyran-4-ylmethyl)-1H-indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone; or

(K) Unclassified Synthetic Cannabinoids, including without limitation the following:

(i) CP 50556-1 hydrochloride, or [(6S,6aR,9R,10aR)-9-hydroxy-6-methyl-3-[(2R)-5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl] acetate;

(ii) HU-210, or (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

(iii) HU-211, or Dexanabinol,(6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c-]chromen-1-ol;

(iv) Dimethylheptylpyran or DMHP;

(v) WIN55,212-2, or 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl-1-naphthalenylmethanone;

(vi) URB597, or [3-(3-carbamoylphenyl)phenyl] N-cyclohexylcarbamate;

(vii) URB754, or 6-methyl-2-[(4-methylphenyl)amino]-1-benzoxazin-4-one;

(viii) AKB-48, or N-(1-adamantyl)-1-pentylindazole-3-carboxamide;

(ix) CB-13, or 1-naphthalenyl[4-(pentyloxy)-1-naphthalenyl]-methanone;

(x) URB602, or cyclohexyl N-(3-phenylphenyl)carbamate;

(xi) PB-22, or quinolin-8-yl 1-(5-pentyl)-1H-indole-3-carboxylate;

(xii) 5F-PB-22, or quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate;

(xiii) BB-22, or quinolin-8-yl 1-(cyclohexylmethyl)-1H-indole-3-carboxylate;

(xiv) NNEI (MN-24), or N-1-naphthalenyl-1-pentyl-1H-indole-3-carboxamide; and

(xv) 5F-NNEI, or 1-(5-fluoropentyl)-N-(naphthalen-1-yl)-1H-indole-3-carboxamide; or

(6) A synthetic substance, derivative, or its isomers with:

(A) Similar chemical structure to any substance described in subdivisions (a)(1)-(5) of this section; or

(B) Similar pharmacological effects to any substance described in subdivisions (a)(1)-(5) of this section.

(b) However, except as provided under subsection (c) of this section, the secretary shall not delete a controlled substance listed in this section from Schedule VI.

(c) A prescription drug approved by the United States Food and Drug Administration under 21 U.S.C. § 355 is excluded from Schedule VI unless the secretary objects under § 5-64-201.

History. Acts 1971, No. 590, Art. 2, § 15, as added by Acts 1973, No. 186, § 1; 1979, No. 898, § 22; A.S.A. 1947, § 82-2614.2; Acts 1999, No. 1534, § 1; 2001, No. 320, § 3; 2007, No. 827, § 57; 2011, No. 751, § 2; 2013, No. 329, § 1; 2019, No. 504, § 2; 2019, No. 910, §§ 4841, 4842; 2021, No. 514, § 1.

Amendments. The 2019 amendment by No. 504, in (a)(2), added "unless the tetrahydrocannabinol is" in the introductory language and added (A) through (C).

The 2019 amendment by No. 910 substituted "Secretary" for "Director" in the introductory language of (a); and substituted "secretary" for "director" in (b).

The 2021 amendment inserted "except as provided under subsection (c) of this section" in (b); and added (c).

5-64-216. Schedule revisions.

The Secretary of the Department of Health shall revise and republish the schedules annually.

History. Acts 1971, No. 590, Art. 2, § 16, as added by Acts 1973, No. 186, § 1; 1979, No. 898, § 13; A.S.A. 1947, § 82-2614.3; Acts 2019, No. 910, § 4843.

Amendments. The 2019 amendment substituted "Secretary" for "Director".

Subchapter 3 — Uniform Controlled Substances Act — Regulation of Distribution

SECTION.

5-64-308. Prescriptions — Mandatory electronic prescribing. [Effective on contingent effective date as stated in Acts 2019, No. 447, § 2]

Effective Dates. Acts 2019, No. 447, § 2. Contingent effective date clause provided: "This act is effective on and after the later of: (1) January 1, 2021; or (2) The certification by the Attorney General that the United States Department of Health and Human Services requires mandatory electronic prescribing."

5-64-308. Prescriptions — Mandatory electronic prescribing. [Effective on contingent effective date as stated in Acts 2019, No. 447, § 2]

(a) A prescription for a controlled substance included in Schedule III or Schedule IV shall not be filled or refilled more than six (6) months after the date of the prescription or be refilled more than five (5) times unless renewed by the practitioner.

(b) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(c) Except as provided in subsection (d) of this section, a practitioner shall not issue a prescription for a controlled substance included in Schedule II through Schedule VI unless the prescription is made by electronic prescription from the practitioner issuing the prescription to a pharmacy.

(d) A practitioner may issue a prescription for a controlled substance included in Schedule II through Schedule VI by written, oral, or faxed method if issued:

(1) By:

(A) A veterinarian; or

(B) A practitioner:

(i) To be dispensed by a pharmacy located outside of the state;

(ii) For a controlled substance for which the United States Food and Drug Administration requires the prescription to contain certain elements that are not captured through electronic prescribing methods;

(iii) For the dispensing of a nonpatient-specific prescription under a standing order, approved protocol for drug therapy, collaborative drug management or comprehensive medication management, or in response to a public health emergency or other circumstances in which the practitioner may issue a nonpatient-specific prescription;

(iv) For a controlled substance under a research protocol;

(v)*(a)* Who has received a waiver or a renewal of a waiver for a specified time period from the electronic prescription requirement due to economic hardship, technological limitations that are not reasonably within the control of the practitioner, or other exceptional circumstances demonstrated by the practitioner.

(b) A practitioner who has received a waiver from the United States Department of Health and Human Services shall have a valid waiver in this state; or

(vi) Under circumstances in which the practitioner reasonably determines that obtaining the controlled substances in a timely manner is impractical through electronic prescription and the delay would adversely impact the medical condition of the patient;

(2) In circumstances in which electronic prescribing is not available due to temporary technological or electrical failure; or

(3) When the practitioner and the dispenser are the same entity.

(e)(1) A pharmacist or pharmacy that receives a written, oral, or faxed prescription for a controlled substance included in Schedule I

through Schedule VI is not required to verify that the prescription properly falls under one (1) of the exceptions listed in subsection (d) of this section.

(2) A pharmacist may continue to dispense a controlled substance from an otherwise valid written, oral, or faxed prescription that is consistent with state law or rules or federal law and regulations.

(f) In addition to other penalties available under this chapter, a licensing board of a practitioner may impose a civil penalty of two hundred fifty dollars ($250) per violation of this section.

(g) This section does not apply to prescriptions written by a prescriber employed by or working under a professional services contract for the Division of Correction or the Division of Community Correction.

History. Acts 1971, No. 590, Art. 3, § 2; A.S.A. 1947, § 82-2616; Acts 2013, No. 1331, § 1; 2019, No. 447, § 1.

Effective Dates. Acts 2019, No. 447, § 2. Contingent effective date clause provided: "This act is effective on and after the later of: (1) January 1, 2021; or (2) The certification by the Attorney General that the United States Department of Health and Human Services requires mandatory electronic prescribing."

For text of section effective until the contingency is met, see the bound volume.

Subchapter 4 — Uniform Controlled Substances Act — Prohibitions and Penalties

SECTION.
5-64-412. Violations by public officials or law enforcement officers — Enhanced penalties.
5-64-414. Controlled substance analog.
5-64-415. Drug precursors.
5-64-419. Possession of a controlled substance.
5-64-420. Possession of methamphetamine, heroin, or cocaine with the purpose to deliver.
5-64-421. Possession of fentanyl — Possession of fentanyl with the purpose to deliver — Delivery of fentanyl — Manufacture of fentanyl.
5-64-422. Delivery of methamphetamine, heroin, or cocaine.
5-64-423. Manufacture of methamphetamine, heroin, or cocaine.
SECTION.
5-64-424. Possession of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine with the purpose to deliver.
5-64-426. Delivery of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine.
5-64-427. Manufacture of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine.
5-64-440. Trafficking a controlled substance.
5-64-443. Possession of drug paraphernalia.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

RESEARCH REFERENCES

ALR. Construction and Application of § 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (8 U.S.C. § 1182(a)(2)(A)(i)(II)), and Predecessor Provision, Rendering Inadmissible Any Alien Convicted of, or Who Admits to, Violating Federal, State, or Foreign Laws Relating to Controlled Substances. 93 A.L.R. Fed. 2d 1 (2015).

5-64-402. Controlled substances — Offenses relating to records, maintaining premises, etc.

CASE NOTES

Evidence.

Trial court properly denied defendant's motions for directed verdict and judgment notwithstanding the verdict because there was sufficient evidence to convict him of maintaining a drug premises where an investigator found, during the search of defendant's residence, a pistol, illegal drugs, a large amount of cash, bills with defendant's name and address, pictures of him and his family, communication radios, and a security camera, defendant was in the house when the search warrant was executed, the residence was located approximately 250 feet from a designated school bus stop, and defendant's knowledge of maintaining a drug premises could be inferred from the evidence. Velasco v. State, 2016 Ark. App. 454, 504 S.W.3d 650 (2016).

For purposes of subdivision (a)(2) of this section, the State presented substantial evidence that defendant sold methamphetamine from the house and stored illegal substances there; her vehicle was parked at the residence on the date of the first buy, she was alone in the residence when the search warrant was executed after the second buy, plus there was a substantial amount of methamphetamine already weighed and packaged in the residence, and the confidential informant identified defendant as his source. Szczerba v. State, 2017 Ark. App. 27, 511 S.W.3d 360 (2017).

Evidence was sufficient to sustain defendant's conviction of maintaining a drug premises given the testimony that defendant resided at the residence and knew drugs were distributed on the premises. Cave v. State, 2017 Ark. App. 212, 518 S.W.3d 134 (2017).

Evidence was sufficient to support defendant's conviction for maintaining a drug premises because he opened the door to the hotel room, verified that he rented the hotel room, and consented to a search of the room, though two other adults were in the room; an officer testified that defendant disclaimed ownership of all methamphetamine-related contraband and admitted ownership only of the marijuana found in his pocket; the jury could have believed that defendant owned or possessed all the contraband; and the State proved that the purpose of the room was for others to resort to for drug usage or to obtain drugs as an officer testified that certain items were paraphernalia either for the use of a drug or for the distribution or sale of a drug. Worsham v. State, 2017 Ark. App. 702, 537 S.W.3d 789 (2017).

Evidence was sufficient to support defendant's conviction for maintaining a premises for drug activity because the State did not have to prove that drug sales occurred as an element of the crime and the fact that the dwelling was used for consuming or using drugs was enough.

Garner v. State, 2020 Ark. App. 101, 594 S.W.3d 145 (2020).

5-64-404. Use of a communication device.

CASE NOTES

Security Cameras.

Evidence was sufficient to support defendant's conviction for using a communication device to facilitate drug-related activity because security cameras positioned around defendant's home were used or useful in the transmission of a picture back to the monitor; under the plain language of this section, security cameras that transmit images to a monitor qualify as communication devices. Harjo v. State, 2017 Ark. App. 337, 522 S.W.3d 839 (2017).

5-64-405. Continuing criminal enterprise.

CASE NOTES

Analysis

Elements.
Sentencing.

Elements.

Defendant's conviction of continuing criminal enterprise under this section and 70-year sentence were affirmed. Regarding the primary felony offense, the circuit court could have reasonably found that defendant constructively transferred methamphetamine to the buyer. The evidence that defendant arranged the price and the location for the buy, combined with defendant's admission that he was a drug dealer and testimony about his method of operation, was substantial evidence that defendant constructively delivered methamphetamine. Hunter v. State, 2017 Ark. App. 256, 522 S.W.3d 793 (2017).

Failing to identify a primary felony offense, the State stated only that the evidence showed defendant committed the requisite underlying felonies and these felonies were part of a series of a continuing criminal enterprise; for due-process reasons, the appellate court rejected the State's use of underlying offenses against defendant that were not named in the criminal information. Hunter v. State, 2017 Ark. App. 256, 522 S.W.3d 793 (2017).

Simply possessing a controlled substance is not a qualifying offense under this section. Hunter v. State, 2017 Ark. App. 256, 522 S.W.3d 793 (2017).

There was sufficient proof that defendant constructively delivered methamphetamine to two buyers, meeting the second element of the continuing criminal enterprise statute; defendant admitted he was a drug dealer, buyers went to buy drugs as directed by defendant, and the court rejected defendant's argument that he could not be guilty of delivering methamphetamine because he did not physically deliver the drugs. Hunter v. State, 2017 Ark. App. 256, 522 S.W.3d 793 (2017).

For purposes of the continuing criminal enterprise statute, circumstantial evidence and direct testimony supported the conclusion that defendant exerted some type of influence over five or more people, and their compliance with his directions or instructions made the case. Hunter v. State, 2017 Ark. App. 256, 522 S.W.3d 793 (2017).

For purposes of the continuing criminal enterprise statute, the circuit court could reasonably have inferred that defendant derived substantial income from selling methamphetamine; he was unemployed or underemployed during most of the seven-year period at issue, yet was shown to have had large amounts of cash at various times, he admitted receiving income from selling methamphetamine, and he provided financial gifts and support to his girlfriends and numerous children. Hunter v. State, 2017 Ark. App. 256, 522 S.W.3d 793 (2017).

Sentencing.

Sentencing range for a first-time, continuing criminal enterprise conviction is linked to the primary, underlying drug offense in subdivision (a)(1) of this section; the sentencing range is tethered to the sentencing range of the offense charged. Hunter v. State, 2017 Ark. App. 256, 522 S.W.3d 793 (2017).

Defendant's 70-year sentence under this section was within statutory limits based on the statute in force when the offense was committed, but the circuit court erred in also sentencing defendant to 10 years' suspended imposition of sentence, which was forbidden under subsection (e) of this section and also under § 5-4-104. Hunter v. State, 2017 Ark. App. 256, 522 S.W.3d 793 (2017).

Defendant was charged with only one crime: engaging in a continuing criminal enterprise, and although the State charged him as a habitual offender, habitual-offender status is not a separate crime or offense, and the sentence had to be modified accordingly. Hunter v. State, 2017 Ark. App. 256, 522 S.W.3d 793 (2017).

Because defendant's prior felony records were more than 15 years old, and his prior misdemeanor record was more than 10 years old, they did not count toward his criminal history under the presumptive standards, and his criminal-history score was 0, rather than 2. Hunter v. State, 2017 Ark. App. 256, 522 S.W.3d 793 (2017).

Given the testimony against defendant, and because the presumptive sentencing standards are merely advisory, the circuit court did not abuse its discretion by departing from the presumptive sentence of 20 years' imprisonment and imposing 70 years' imprisonment on the continuing criminal enterprise conviction. Hunter v. State, 2017 Ark. App. 256, 522 S.W.3d 793 (2017).

5-64-411. Proximity to certain facilities — Enhanced penalties.

CASE NOTES

Analysis

Culpable Mental State.
Evidence Sufficient.

Culpable Mental State.

Circuit court erred in concluding that this section does not require a culpable mental state. This section adds an enhanced sentence for a person found guilty of certain offenses, including that for which appellant was convicted, only if an additional requirement is met, i.e., the location where the act was committed; thus, this section defines an offense. Small v. State, 2018 Ark. App. 80, 543 S.W.3d 516 (2018).

Because a circuit court erred in ruling that a sentencing-enhancement offense under this section, for delivery of hydrocodone within 1,000 feet of a church, did not require a culpable mental state and improperly instructed the jury, reversal and remand were required; a culpable mental state is imputed under § 5-2-203 when the statute defining an offense does not prescribe a culpable mental state. Silmon v. State, 2018 Ark. App. 388, 557 S.W.3d 266 (2018).

Because a circuit court erred in concluding that an enhancement offense under this section — for possession of methamphetamine with the purpose to deliver within 1,000 feet of a church — did not require a culpable mental state and improperly instructed the jury, reversal and remand for a new trial on the enhancement offense were necessary. French v. State, 2018 Ark. App. 502, 563 S.W.3d 582 (2018).

Evidence Sufficient.

Evidence was sufficient to support a sentence enhancement for delivering a controlled substance within 1,000 feet of a school or a church, where defendant failed to challenge on appeal the admissibility of an officer's testimony about the use of a Lidar laser gun to measure the distances, and the officer testified that he measured the distance between the school and the property where appellant sold drugs at 576 feet. Childers v. State, 2016 Ark. App. 371, 498 S.W.3d 742 (2016).

5-64-412. Violations by public officials or law enforcement officers — Enhanced penalties.

(a) As used in this section:

(1) "Law enforcement officer" means any member of the Division of Arkansas State Police or the Arkansas Highway Police Division of the Arkansas Department of Transportation and any other certified law enforcement officer employed full time by the State of Arkansas or any political subdivision of the State of Arkansas or court personnel in Arkansas; and

(2) "Public official" means any person holding or appointed to an elective office of state, county, or city government and any member of any board or commission of state, county, city, or local government including an improvement district or school district.

(b) Any public official or law enforcement officer who commits a felony violation of this chapter shall have any term of imprisonment imposed for the violation enhanced by a term not to exceed ten (10) years and a fine of not less than ten thousand dollars ($10,000).

History. Acts 1989 (3rd Ex. Sess.), No. 80, §§ 1, 2; 2005, No. 1994, § 305[B]; 2017, No. 707, § 3.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a)(1).

5-64-414. Controlled substance analog.

(a)(1) "Controlled substance analog" means a substance:

(A) The chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or Schedule II or that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or Schedule II; or

(B) With respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or Schedule II.

(2) "Controlled substance analog" does not include:

(A) A controlled substance;

(B) A substance for which there is an approved new drug application;

(C) A substance with respect to which an exemption is in effect for investigational use by a particular person under § 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(D) Any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(b) A controlled substance analog, to the extent intended for human consumption, is treated for the purposes of this chapter as a substance included in Schedule I.

(c) Within ten (10) days after the initiation of prosecution with respect to a controlled substance analog by indictment or information, the prosecuting attorney shall notify the Secretary of the Department of Health of information relevant to emergency scheduling as provided for in § 5-64-201(a).

(d) After final determination that the controlled substance analog should not be scheduled, no prosecution relating to that substance as a controlled substance analog may continue or take place.

History. Acts 1989 (3rd Ex. Sess.), No. 84, § 1; 2005, No. 1994, § 306; 2019, No. 910, § 4844.

Amendments. The 2019 amendment substituted "Secretary" for "Director" in (c).

5-64-415. Drug precursors.

(a) Definition.

(1) "Drug precursor" means any substance, material, compound, mixture, or preparation listed in rules promulgated or adopted pursuant to this section or any of their salts or isomers.

(2) "Drug precursor" specifically excludes those substances, materials, compounds, mixtures, or preparations that:

(A) Are prepared for dispensing pursuant to a prescription or over-the-counter distribution as a substance that is generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., as amended; or

(B) Have been manufactured, distributed, or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of § 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 355, as amended.

(b) Authority to Control Drug Precursors by Rule.

(1)(A) The Department of Health shall promulgate by rule a list of drug precursors, comprised of any substance, material, compound, mixture, or preparation or any of their salts or isomers that are drug precursors.

(B) The Department of Health may add substances to, delete substances from, and reschedule substances listed in the drug precursors list pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) In making a determination regarding a substance to be placed on the drug precursor list, the Department of Health shall consider the following:

(A) Whether the substance is an immediate precursor of a controlled substance;

(B) The actual or relative potential for abuse;

(C) The scientific evidence of the substance's pharmacological effect, if known;

(D) The state of current scientific knowledge regarding the substance or the controlled substance for which it is a precursor;

(E) The history and current pattern of abuse of the controlled substance for which the substance is a precursor;

(F) The scope, duration, and significance of abuse of the controlled substance for which the substance is a precursor;

(G) The risk to the public health; and

(H) The potential of the substance or the controlled substance to produce psychic or physiological dependence liability.

(3) The Department of Health may consider findings of the United States Food and Drug Administration or the United States Drug Enforcement Administration as prima facie evidence relating to one (1) or more of the factors listed in subdivision (b)(2) of this section in connection with the Department of Health's determination.

(4)(A) After considering the factors enumerated in subdivision (b)(2) of this section, the Department of Health shall make findings with respect to the factors and shall promulgate a rule controlling a substance as a drug precursor upon a finding that the substance has a potential for abuse.

(B) If the Department of Health designates a substance as an immediate drug precursor, a substance that is a precursor of the controlled precursor is not subject to control solely because it is a precursor of the controlled precursor.

(5) Authority to control under this section does not extend to an alcoholic beverage, alcoholic liquor, a fermented malt beverage, or tobacco.

(c) License Required — Controlled Substances Drug Precursors.

(1)(A) The Department of Health may promulgate rules and charge reasonable fees of not more than twenty-five dollars ($25.00) relating to the licensing and control of the manufacture, possession, transfer, and transportation of a drug precursor.

(B)(i) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State, a cash fund to be known as the "Health Department Drug Precursor Cash Fund".

(ii) The fees established under this subsection shall be collected by the Department of Health and transmitted to the Treasurer of State, who shall credit the fees to the Health Department Drug Precursor Cash Fund.

(iii) The fund shall be administered by the Division of Pharmacy Services and Drug Control of the Department of Health.

(2) Any person that manufactures, possesses, transfers, or transports any drug precursor or that proposes to engage in the manufacture, possession, transfer, or transportation of any drug precursor shall annually obtain a license issued by the Department of Health.

(3) A person licensed by the Department of Health to manufacture, possess, transfer, or transport a drug precursor may manufacture, possess, transfer, or transport the drug precursor to the extent authorized by the person's license and in conformity with any other provision of law.

(4) The following persons are not required to be licensed under this subsection and may lawfully possess a drug precursor:

(A) A physician, dentist, pharmacist, veterinarian, or podiatrist;

(B) An agent of any manufacturer, or wholesaler of any drug precursor if the agent is acting in the usual course of his or her principal's business or employment;

(C) An employee of a licensed common or contract carrier or licensed warehouseman whose possession of any drug precursor is in the usual course of the licensed common or contract carrier or licensed warehouseman's business;

(D) A student enrolled in a college chemistry class for credit if the student's use of the drug precursor is for a bona fide educational purpose and the educational institution otherwise possesses all the necessary licenses required by the Department of Health;

(E) An officer or employee of an appropriate agency of federal, state, or local government and a law enforcement agency acting pursuant to its official duties; and

(F) Any researcher, including an analytical laboratory, experimenting with, studying, or testing any drug analog that is licensed by the Department of Health pursuant to the requirements of this subsection.

(d) WAIVER. The Department of Health may waive by rule the requirement for licensing of certain manufacturers if the waiver is consistent with the public health and safety.

(e) ISSUANCE OF LICENSE — FEES.

(1)(A) The Department of Health shall license an applicant to manufacture, possess, transfer, or transport a drug precursor unless it determines that the issuance of the license would be inconsistent with the public interest.

(B) In determining the public interest, the Department of Health shall consider the following factors:

(i) Maintenance of effective controls against diversion of a drug precursor other than a legitimate medical, scientific, or industrial channel;

(ii) Compliance with applicable state and local law;

(iii) Any conviction of the applicant under federal or state law relating to any controlled substance or drug precursor;

(iv) Past experience in the manufacture, possession, transfer, or transportation of a drug precursor and the existence in the applicant's establishment of effective controls against diversion;

(v) Furnishing by the applicant of false or fraudulent material in any application filed under subsection (c) of this section;

(vi) Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense a controlled substance or drug precursor authorized by federal law; and

(vii) Any other factor relevant to and consistent with the public health and safety.

(2) Licensing under this section does not entitle a licensee to manufacture, possess, transfer, or transport a drug precursor other than a drug precursor allowed in the license.

(f) Denial, Revocation, or Suspension of License.

(1) The Department of Health may deny, revoke, or suspend a license issued pursuant to subsection (c) of this section for any of the following reasons:

(A) If a licensee is convicted of, or has accepted by a court a plea of guilty or nolo contendere to a felony under any state or federal law relating to a controlled substance or a drug precursor;

(B)(i) If a licensee has its federal registration to manufacture, conduct research on, distribute, or dispense a controlled substance or a drug precursor suspended or revoked.

(ii) The Department of Health may limit revocation or suspension of a license to the particular controlled substance or drug precursor that was the basis for revocation or suspension; or

(C) If a licensee commits an unlawful act as enumerated in subsection (g) of this section.

(2)(A)(i) When the Department of Health suspends or revokes a license, any controlled substance or drug precursor owned or possessed by the licensee at the time of the suspension or on the effective date of the revocation order may be placed under seal.

(ii) No disposition may be made of a controlled substance or drug precursor under seal until the time for making an appeal has elapsed or until all appeals have been concluded unless a court orders otherwise or orders the sale of any perishable controlled substance or drug precursor and the deposit of the proceeds with the court.

(B) Upon a revocation order becoming final:

(i) Any controlled substance and any drug precursor may be forfeited to the Department of Health;

(ii) Any expense of disposing of a forfeited controlled substance or drug precursor shall be borne by the licensee;

(iii) The court may order the licensee to pay a reasonable sum of money to the Department of Health to cover the expenses of disposition; and

(iv) The Department of Health may seek enforcement of the order of payment, or reimbursement for any expenses through any lawful means.

(g) Unlawful Acts — Licenses — Penalties.

(1) It is unlawful to:

(A) Knowingly transfer a drug precursor except to an authorized licensee;

(B) Knowingly use in the course of the manufacture or transfer of a drug precursor a license number which is fictitious, revoked, suspended, or issued to another person;

(C) Knowingly acquire or obtain, or attempt to acquire or obtain, possession of a drug precursor by misrepresentation, fraud, forgery, deception, or subterfuge;

(D) Knowingly furnish false or fraudulent material information in, or omitting any material information from, any application, report, or other document required to be kept or filed under this section or any record required to be kept by this section;

(E) Have knowledge of the manufacture of a drug precursor not authorized by a licensee's license, or have knowledge of the transfer of a drug precursor not authorized by the licensee's license to another licensee or authorized person;

(F) Refuse entry into any premises for any inspection authorized by this section; or

(G) Manufacture, possess, transfer, or transport a drug precursor without the appropriate license or in violation of any rule of the Department of Health.

(2) Any person who violates a provision of this subsection is guilty of a Class D felony.

(h) Records to be Kept — Order Forms.

(1) A manufacturer, wholesaler, retailer, or other person that sells, transfers, or otherwise furnishes any drug precursor to a person shall make an accurate and legible record of the transaction and maintain the record for a period of at least two (2) years after the date of the transaction.

(2) Before selling, transferring, or otherwise furnishing to a person in this state a drug precursor, a manufacturer, wholesaler, retailer, or other person shall:

(A) If the recipient does not represent a business, obtain from the recipient:

(i) The recipient's driver's license number or other personal identification certificate number, date of birth, and residential or mailing address, other than a post office box number, from a driver's license or personal identification card issued by the Department of Finance and Administration that contains a photograph of the recipient;

(ii) The year, state, and number of the motor vehicle license of the motor vehicle owned or operated by the recipient;

(iii) A complete description of how the drug precursor is to be used; and

(iv) The recipient's signature;

(B) If the recipient represents a business, obtain from the recipient:

(i) A letter of authorization from the business that includes the business license or comptroller tax identification number, address, area code, and telephone number, and a complete description of how the drug precursor is to be used; and

(ii) The recipient's signature; and

(C) For any recipient, sign as a witness to the signature and identification of the recipient.

(3)(A) Except as otherwise provided in this section, a manufacturer, wholesaler, retailer, or other person that sells, transfers, or otherwise furnishes to a person in this state a drug precursor shall submit to

the Department of Health, at least twenty-one (21) days before the delivery of the drug precursor, a report of the transaction on a form obtained from the Department of Health that includes the information required by subdivision (h)(2)(A) or subdivision (h)(2)(B) of this section.

(B) A copy of this report shall be transmitted to the Division of Arkansas State Police.

(i) REPORTS OF THEFT, LOSS, SHIPPING DISCREPANCIES, AND OTHER TRANSACTIONS.

(1) The theft or loss of any drug precursor discovered by any person regulated by this section shall be reported to the Department of Health and the Division of Arkansas State Police within three (3) days after the discovery.

(2)(A) Any difference between the quantity of any drug precursor received and the quantity shipped shall be reported to the Department of Health within three (3) days after the receipt of actual knowledge of the discrepancy.

(B) When applicable, any report made pursuant to this subsection shall also include the name of any common carrier or person that transported the substance and the date of shipment of the substance.

(3) Any manufacturer, wholesaler, retailer, or other person subject to any other reporting requirement in this section that receives from a source outside of this state any drug precursor specified in rules promulgated pursuant to this section shall submit a report of the transaction to the Department of Health in accordance with rules adopted by the Department of Health.

(4) Any person violating any provision of this subsection is guilty of a Class A misdemeanor.

(5) The Department of Health may authorize a manufacturer, wholesaler, retailer, or other person to submit a comprehensive monthly report instead of the report required by subdivision (i)(2)(A) of this section if the Secretary of the Department of Health determines that:

(A) There is a pattern of regular supply and purchase of the drug precursor between the furnisher and the recipient; or

(B) The recipient has established a record of utilization of the drug precursor solely for a lawful purpose.

(j) INVESTIGATIONS AND INSPECTIONS.

(1) The Division of Arkansas State Police specifically may investigate any violation of a provision of this section, and enforce its provisions.

(2) Further, the Division of Arkansas State Police and the Department of Health shall exchange information gathered or received by either agency under the provisions of this section.

(3) Any record kept by a licensee pursuant to this section is open to inspection by an authorized investigator of the Division of Arkansas State Police or the Department of Health during normal business hours and at any other reasonable time.

(k) In addition to rules authorized by a provision of this section, the Department of Health may promulgate necessary rules to carry out the provisions of this section.

History. Acts 1991, No. 954, §§ 1, 3, 4; 2007, No. 827, §§ 63, 64; 2017, No. 333, § 2; 2019, No. 315, §§ 157-163; 2019, No. 910, § 4845.

Amendments. The 2017 amendment substituted "drug precursor" for "precursor substance subject to subdivision (h)(1) of this section" in the introductory language of (h)(2); substituted "recipient" for "receipient" following "If the" in the introductory language of (h)(2)(A); substituted "drug precursor" for "substance" in (h)(2)(A)(iii); and substituted "drug precursor" for "precursor substance" in (h)(2)(B)(i).

The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (a)(1); deleted "and Regulation" following "Rule" in the introductory language of (b); deleted "and regulation" following "rule" in (b)(1)(A); substituted "rules" for "regulations" in (c)(1)(A); substituted "rule" for "regulation" in (d); deleted "or regulation" following "rule" in (g)(1)(G); and deleted "and regulations" following the first instance of "rules" in (i)(3) and twice in (k).

The 2019 amendment by No. 910 substituted "Secretary" for "Director" in the introductory language of (i)(5).

5-64-419. Possession of a controlled substance.

(a) Except as provided by this chapter, it is unlawful for a person to possess a controlled substance.

(b) A person who violates this section with respect to:

(1) A Schedule I or Schedule II controlled substance that is methamphetamine, heroin, or cocaine with an aggregate weight, including an adulterant or diluent, of:

(A) Less than two grams (2g) upon conviction is guilty of a Class D felony;

(B) Two grams (2g) or more but less than ten grams (10g) upon conviction is guilty of a Class C felony; or

(C) Ten grams (10g) or more but less than two hundred grams (200g) upon conviction is guilty of a Class B felony;

(2) A Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine with an aggregate weight, including an adulterant or diluent, of:

(A) Less than two grams (2g) upon conviction is guilty of a Class D felony;

(B) Two grams (2g) or more but less than twenty-eight grams (28g) upon conviction is guilty of a Class C felony; or

(C) Twenty-eight grams (28g) or more but less than two hundred grams (200g) upon conviction is guilty of a Class B felony;

(3) A Schedule III controlled substance with an aggregate weight, including an adulterant or diluent, of:

(A)(i) Less than two grams (2g) upon conviction is guilty of a Class A misdemeanor.

(ii) However, if the person has four (4) or more prior convictions under this section or the former § 5-64-401(c), upon conviction the person is guilty of a Class D felony for a violation of subdivision (b)(3)(A)(i) of this section;

(B) Two grams (2g) or more but less than twenty-eight grams (28g) upon conviction is guilty of a Class D felony;

(C) Twenty-eight grams (28g) or more but less than two hundred grams (200g) upon conviction is guilty of a Class C felony; or

(D) Two hundred grams (200g) or more but less than four hundred grams (400g) upon conviction is guilty of a Class B felony;

(4) A Schedule IV or Schedule V controlled substance with an aggregate weight, including an adulterant or diluent, of:

(A)(i) Less than twenty-eight grams (28g) upon conviction is guilty of a Class A misdemeanor.

(ii) However, if the person has four (4) or more prior convictions under this section or the former § 5-64-401(c), upon conviction the person is guilty of a Class D felony for a violation of subdivision (b)(4)(A)(i) of this section;

(B) Twenty-eight grams (28g) or more but less than two hundred grams (200g) upon conviction is guilty of a Class D felony;

(C) Two hundred grams (200g) or more but less than four hundred grams (400g) upon conviction is guilty of a Class C felony; or

(D) Four hundred grams (400g) or more but less than eight hundred grams (800g) upon conviction is guilty of a Class B felony; or

(5) A Schedule VI controlled substance with an aggregate weight, including an adulterant or diluent, of:

(A) Less than four ounces (4 oz.) upon conviction is guilty of a Class A misdemeanor;

(B) One ounce (1 oz.) or more but less than four ounces (4 oz.) and the person has four (4) previous convictions under this section or the former § 5-64-401(c) upon conviction is guilty of a Class D felony;

(C) Four ounces (4 oz.) or more but less than ten pounds (10 lbs.) upon conviction is guilty of a Class D felony;

(D) Ten pounds (10 lbs.) or more but less than twenty-five pounds (25 lbs.) upon conviction is guilty of a Class C felony;

(E) Twenty-five pounds (25 lbs.) or more but less than one hundred pounds (100 lbs.) upon conviction is guilty of a Class B felony; or

(F) One hundred pounds (100 lbs.) or more but less than five hundred pounds (500 lbs.) upon conviction is guilty of a Class A felony.

(c) If a person possesses a controlled substance in violation of this section while the person is an inmate in a state criminal detention facility, county criminal detention facility, city criminal detention facility, or juvenile detention facility, the penalty for the offense is increased to the next higher classification as prescribed by law for the offense.

History. Acts 2011, No. 570, § 44; 2013, No. 529, § 1; 2021, No. 887, § 2.

Amendments. The 2021 amendment inserted "heroin" in the introductory language of (b)(1); and inserted "fentanyl, heroin" in the introductory language of (b)(2).

Cross References. Joshua Ashley-Pauley Act, § 20-13-1701 et seq.

RESEARCH REFERENCES

ALR. Construction and Application of § 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (8 U.S.C. § 1182(a)(2)(A)(i)(II)), and Predecessor Provision, Rendering Inadmissible Any Alien Convicted of, or Who Admits to,

Violating Federal, State, or Foreign Laws Relating to Controlled Substances. 93 A.L.R. Fed. 2d 1 (2015).

Ark. L. Rev. Bryan Altman, Comment: Improving the Indigent Defense Crisis Through Decriminalization, 70 Ark. L. Rev. 769 (2017).

CASE NOTES

Analysis

Continuing Criminal Enterprise.
Evidence Sufficient.
—Identity of Controlled Substance.
Marijuana.
Possession.
Probation Revocation.
Sentence.
Usable Amounts.

Continuing Criminal Enterprise.

Simply possessing a controlled substance is not a qualifying offense under the continuing-criminal-enterprise statute, § 5-64-405. Hunter v. State, 2017 Ark. App. 256, 522 S.W.3d 793 (2017).

Evidence Sufficient.

State sufficiently put forth evidence to support defendant's conviction for felony possession of methamphetamine with intent to deliver and to support his conviction for misdemeanor possession of marijuana. The evidence was sufficient that defendant was in possession of the drugs because defendant had exercised control over a motel room where the contraband was discovered. Jordan v. State, 2016 Ark. App. 255, 492 S.W.3d 543 (2016).

At a minimum, defendant possessed .01 grams of cocaine, a usable amount, and it was well within the jury's province to credit certain testimony that the cocaine found in defendant's pocket weighed .0577 grams; therefore, there was sufficient evidence that defendant possessed a usable amount of cocaine and his conviction was affirmed. Wells v. State, 2017 Ark. App. 174, 518 S.W.3d 106 (2017).

Substantial evidence supported defendant's convictions for possession of methamphetamine and drug paraphernalia, where the testimony showed that he had tossed and hid items in an attempt to conceal them from the police, and the police recovered a baggie and a pipe that were thrown out of the side of the vehicle. Payne v. State, 2017 Ark. App. 263, 520 S.W.3d 719 (2017).

Circuit court did not err in denying defendant's motion to dismiss the possession of methamphetamine and simultaneous possession of methamphetamine and a firearm charges where a deputy, while pursuing defendant, observed him throw a black object out of the window, the deputy discovered a bag of narcotics and a firearm in the location, and the deputy did not observe any other traffic in the area; thus, substantial circumstantial evidence supported defendant's constructive possession of the drugs and firearm. Terry v. State, 2018 Ark. App. 435, 559 S.W.3d 301 (2018).

Evidence was sufficient to support defendant's conviction for possession of methamphetamine, given that the deputy testified that defendant had a bag containing a crystal-like rock substance in his pants pocket when he was searched and testing revealed that the substance was 4.3995 grams of methamphetamine. Martin v. State, 2019 Ark. App. 19, 567 S.W.3d 558 (2019).

Substantial evidence supported defendant's convictions for possession of methamphetamine and drug paraphernalia because the officer testified that he observed aluminum foil fall out of defendant's right pants leg at the detention center, he also discovered a piece of nitrile glove that contained a small baggie of white crystalline substance inside the aluminum foil, defendant later admitted that it contained methamphetamine, and the substance tested positive for methamphetamine. Haney v. State, 2020 Ark. App. 341, 602 S.W.3d 154 (2020).

Because substantial evidence was presented at trial of the offense of possession of a controlled substance, including an officer's testimony that he smelled marijuana when he approached defendant's vehicle, defendant appeared sweaty, and a small bag of cocaine was found in the vehicle, the circuit court was correct in denying defendant's motions for directed verdict. Williams v. State, 2021 Ark. App. 164 (2021).

—Identity of Controlled Substance.

State need not always submit a chemical analysis to prove the identity of a

controlled substance, including pills; circumstantial evidence can suffice. Sufficient evidence supported defendant's convictions because a forensic chemist with the state crime laboratory testified that, in his professional opinion, the drugs found in defendant's mobile home were oxycodone and hydrocodone. The chemist, who relied on a visual identification alone, rather than chemical testing, said that the pills showed no dubious markings that required more testing. Kellensworth v. State, 2021 Ark. 5, 614 S.W.3d 804 (2021).

Marijuana.

Even had appellant's argument regarding the weight of the marijuana been properly preserved, the argument lacked merit; although the expert testified that the bags of marijuana he tested may have included other plant material besides marijuana, defendant was convicted of Class D felony possession of marijuana, which required a finding that he possessed 4 ounces or more, and the expert testified that the total weight of the marijuana tested was 39.65 ounces and that the bags contained mostly marijuana. Cogburn v. State, 2016 Ark. App. 543 (2016).

Possession.

Substantial evidence did not support the finding that defendant constructively possessed cocaine since the evidence failed to give rise to a reasonable inference that defendant knew the cocaine was in the vehicle he was driving; the only evidence linking defendant to the cocaine was that he was driving the jointly occupied vehicle and the cocaine was found in the front center cup holder. Baltimore v. State, 2017 Ark. App. 622, 535 S.W.3d 286 (2017).

Evidence was sufficient to support defendant's convictions of felony theft by receiving, possession of methamphetamine, and possession of drug paraphernalia, as defendant was in constructive possession of the contraband found at the residence; although another individual also was in the residence at the time of the search, defendant had listed the residence as his address, the contraband was found in plain view in common areas in and around the house, and the fact that defendant was in a bedroom hiding under a bed when the search commenced did not negate the additional factors linking him to the contraband. Mudd v. State, 2018 Ark. App. 628, 565 S.W.3d 154 (2018).

Substantial evidence supported defendant's convictions for possession of methamphetamine and possession of paraphernalia because (1) defendant admitted she had smoked methamphetamine that day, (2) defendant owned the house where the methamphetamine was found hidden in a water-heater closet, (3) defendant could not disclaim possession due to being absent when the search warrant was executed, (4) the jury was not required to believe defendant's testimony suggesting that another person had hid the drugs in her residence, and (5) defendant's knowledge of and control over the contraband found in her residence could be inferred from the circumstances. Knauls v. State, 2020 Ark. App. 48, 593 S.W.3d 58 (2020).

Circuit court properly convicted defendant, upon a jury verdict, of possession of cocaine in a criminal detention facility because he exercised dominion and control over the lockbox in which the cocaine was found where he was alone and sleeping in his cell when the officers began the search, the cocaine was found in the lockbox belonging to defendant and for which only he had a key, and, even if both defendant and his cellmate had access to the lockbox, there was sufficient evidence to establish defendant's constructive possession based on joint occupancy. Moten v. State, 2020 Ark. App. 58, 593 S.W.3d 504 (2020).

Evidence was insufficient to support defendant's conviction of possession of less than two grams of methamphetamine because the State did not present substantial evidence that defendant constructively possessed methamphetamine that was found in a nightstand drawer in a bedroom of a jointly occupied house where the State argued that the presence of the ID of defendant's girlfriend in the room was a sufficient link to defendant. Garner v. State, 2020 Ark. App. 101, 594 S.W.3d 145 (2020).

Although the evidence was circumstantial that defendant had constructive possession over the contraband found in her home, her behavior when asking for her medication, description of the bag containing her medication and exactly where it would be located in the house she jointly occupied with her daughter, the existence

of multiple bottles of prescription medication with defendant's name being inside the bag with the contraband, and defendant's denial of ownership showed that she exercised care, control, and management over the contraband and that she knew the matter possessed was contraband. Richard v. State, 2021 Ark. App. 25, 615 S.W.3d 759 (2021).

Probation Revocation.

Defense counsel was allowed to withdraw and the circuit court properly revoked defendant's probation because the circuit court heard sufficient evidence to find by a preponderance of the evidence that defendant had possessed marijuana and thus violated his probation. Brown v. State, 2018 Ark. App. 367, 553 S.W.3d 787 (2018).

Sentence.

Defendant was charged as a habitual offender, having been previously convicted of four felonies, and the jury convicted him of a Class D felony for possessing a usable amount of cocaine, and thus the jury could have imposed punishment within a range of zero years to not more than 15 years in prison; the circuit court explicitly considered defendant's criminal history and determined that an alternative sentence of probation would not be appropriate, and this was not an abuse of discretion, but an exercise of it. Wells v. State, 2017 Ark. App. 174, 518 S.W.3d 106 (2017).

Usable Amounts.

Evidence was sufficient to convict defendant of possession of less than two grams of cocaine, as the State proved that defendant possessed a usable amount of cocaine. The State's expert witness testified that defendant possessed four milligrams of cocaine powder and testified as to the specific process used to measure the cocaine; the expert witness's description of his process revealed that the cocaine was capable of quantitative analysis, could be seen with a naked eye, was tangible and could be picked up, and was a clearly measurable amount. Christian v. State, 2018 Ark. App. 594, 566 S.W.3d 527 (2018).

Circuit court properly denied defendant's motion for a directed verdict because she twice admitted that she possessed a syringe that was "loaded" and filled up, and the loaded syringe and its contents, including the methamphetamine, weighed 3.61 grams, which was sufficient evidence on which the jury could rely to find that the syringe contained a usable amount of methamphetamine in a consumable form. Kolb v. State, 2021 Ark. 58 (2021).

5-64-420. Possession of methamphetamine, heroin, or cocaine with the purpose to deliver.

(a) Except as provided by this chapter, it is unlawful if a person possesses methamphetamine, heroin, or cocaine with the purpose to deliver the methamphetamine, heroin, or cocaine. Purpose to deliver may be shown by any of the following factors:

(1) The person possesses the means to weigh, separate, or package methamphetamine, heroin, or cocaine;

(2) The person possesses a record indicating a drug-related transaction;

(3) The methamphetamine, heroin, or cocaine is separated and packaged in a manner to facilitate delivery;

(4) The person possesses a firearm that is in the immediate physical control of the person at the time of the possession of methamphetamine, heroin, or cocaine;

(5) The person possesses at least two (2) other controlled substances in any amount; or

(6) Other relevant and admissible evidence that contributes to the proof that a person's purpose was to deliver methamphetamine, heroin, or cocaine.

(b) A person who violates this section upon conviction is guilty of a:

(1) Class C felony if the person possessed less than two grams (2g) of methamphetamine, heroin, or cocaine by aggregate weight, including an adulterant or diluent;

(2) Class B felony if the person possessed two grams (2g) or more but less than ten grams (10g) of methamphetamine, heroin, or cocaine by aggregate weight, including an adulterant or diluent; or

(3) Class A felony if the person possessed ten grams (10g) or more but less than two hundred grams (200g) of methamphetamine, heroin, or cocaine by aggregate weight, including an adulterant or diluent.

History. Acts 2011, No. 570, § 45; 2021, No. 887, § 3.

Amendments. The 2021 amendment inserted "heroin" in the section heading and throughout the section.

CASE NOTES

Analysis

Evidence Sufficient.
Informants.
Possession.

Evidence Sufficient.

State sufficiently put forth evidence to support defendant's conviction for felony possession of methamphetamine with intent to deliver and to support his conviction for misdemeanor possession of marijuana. The evidence was sufficient that defendant was in possession of the drugs because defendant had exercised control over a motel room where the contraband was discovered. Jordan v. State, 2016 Ark. App. 255, 492 S.W.3d 543 (2016).

Evidence that defendant was the only person in the vehicle when arrested, both the methamphetamine and the drug paraphernalia were within his reach, the methamphetamine was packed in one large and one small container, and defendant had a large amount of cash on him was sufficient to support defendant's conviction for possession with intent to deliver. Medlock v. State, 2016 Ark. App. 282, 493 S.W.3d 789 (2016).

Informants.

Defendant was not charged with any crimes as a result of the controlled buys, and instead he was charged with possession of methamphetamine with purpose to deliver after execution of the search warrant; the informant was not at the execution of the warrant and only provided information that led to its issuance, and thus defendant was not entitled to the identity of and information about the informant. Deloney v. State, 2021 Ark. App. 36, 617 S.W.3d 717 (2021).

Possession.

For purposes of his conviction of possession of methamphetamine with purpose to deliver, there was sufficient evidence to find that defendant was in constructive possession of the methamphetamine in the truck, where defendant drove the truck containing the drugs from a church to a nearby gas station because he and codefendant were spooked by police being in the area and defendant knew where the drugs were and was in proximity to them because he hit part of the truck to show the confidential informant where the drugs were hidden. Baker v. State, 2019 Ark. App. 515, 588 S.W.3d 844 (2019).

5-64-421. Possession of fentanyl — Possession of fentanyl with the purpose to deliver — Delivery of fentanyl — Manufacture of fentanyl.

(a)(1) Except as provided by this chapter, it is unlawful for a person to possess fentanyl.

(2) A person who violates subdivision (a)(1) of this section upon conviction is guilty of a Class C felony.

(b)(1) Except as provided by this chapter, it is unlawful for a person to possess fentanyl with the purpose to deliver fentanyl.

(2) Purpose to deliver may be shown by any of the following factors:

(A) The person possesses the means to weigh, separate, or package fentanyl;

(B) The person possesses a record indicating a drug-related transaction;

(C) The fentanyl is separated or packaged in a manner to facilitate delivery;

(D) The person possesses a firearm that is in the immediate physical control of the person at the time of the possession of fentanyl;

(E) The person possesses at least two (2) other controlled substances in any amount; or

(F) Other relevant and admissible evidence that contributes to the proof that a person's purpose was to deliver fentanyl.

(3) A person who violates subdivision (b)(1) of this section upon conviction is guilty of a Class A felony.

(c)(1) Except as provided by this chapter, it is unlawful for a person to deliver fentanyl.

(2) A person who violates subdivision (c)(1) of this section upon conviction is guilty of a Class Y felony.

(d)(1) Except as provided by this chapter, it is unlawful for a person to manufacture fentanyl.

(2) A person who manufactures fentanyl upon conviction is guilty of a Class Y felony.

(e) It is an affirmative defense to prosecution under subsection (a) of this section if a person has a valid prescription for fentanyl and is using the fentanyl lawfully.

(f) It is not a violation under subsections (b) and (c) of this section if a permitted manufacturer, wholesaler, pharmacy, hospital, long-term care facility, or other medical provider delivers, prescribes, administers, or transfers fentanyl for lawful purposes and in compliance with state and federal law.

(g) It is not a violation of subsection (d) of this section for a pharmaceutical company to manufacture fentanyl in compliance with state and federal law.

(h) The unlawful possession of drug paraphernalia containing fentanyl residue shall not be charged under this section and may be charged under § 5-64-443.

History. Acts 2021, No. 887, § 4.

5-64-422. Delivery of methamphetamine, heroin, or cocaine.

(a) Except as provided by this chapter, it is unlawful for a person to deliver methamphetamine, heroin, or cocaine.

(b)(1) A person who delivers less than two grams (2g) by aggregate weight, including an adulterant or diluent, of methamphetamine, heroin, or cocaine upon conviction is guilty of a Class C felony.

(2) A person who delivers two grams (2g) or more but less than ten grams (10g) by aggregate weight, including an adulterant or diluent, of methamphetamine, heroin, or cocaine upon conviction is guilty of a Class B felony.

(3) A person who delivers ten grams (10g) or more but less than two hundred grams (200g) by aggregate weight, including an adulterant or diluent, of methamphetamine, heroin, or cocaine upon conviction is guilty of a Class Y felony.

History. Acts 2011, No. 570, § 46; 2021, No. 887, § 5.

Amendments. The 2021 amendment inserted "heroin" in the section heading and throughout the section.

CASE NOTES

Analysis

Evidence Sufficient.
Informant.

Evidence Sufficient.

Evidence was sufficient to sustain defendant's conviction for delivery of methamphetamine, where a confidential informant testified that she bought a baggie of drugs from defendant, chemical testing confirmed that the baggie contained methamphetamine, and since the informant was not an accomplice, her testimony did not require corroboration. Childers v. State, 2016 Ark. App. 371, 498 S.W.3d 742 (2016).

Informant.

Evidence was sufficient to sustain defendant's conviction for delivery of methamphetamine where a confidential informant drug purchaser testified that she first transferred money for the drug to defendant and he then gave her the drug, and the jury was aware of her prior arrest for drug-related felonies. The informant's testimony alone was sufficient and did not need to be corroborated by the agent; the informant was not working as an informant as part of a negotiated deal to drop drug charges and the agent searched her before and after the purchase. Cave v. State, 2017 Ark. App. 212, 518 S.W.3d 134 (2017).

5-64-423. Manufacture of methamphetamine, heroin, or cocaine.

(a)(1) Except as provided by this chapter, it is unlawful for a person to manufacture methamphetamine.

(2)(A) A person who manufactures methamphetamine in an amount less than two grams (2g) by aggregate weight, including an adulterant or diluent, upon conviction is guilty of a Class C felony.

(B)(i) A person who manufactures methamphetamine in an amount of two grams (2g) or more by aggregate weight, including an adulterant or diluent, upon conviction is guilty of a Class Y felony.

(ii)*(a)* However, a person who manufactures methamphetamine in an amount of two grams (2g) or more by aggregate weight, including an adulterant or diluent, upon conviction is guilty of a Class A felony if the person shows by a preponderance of the evidence that he or she manufactured the methamphetamine for personal use only.

(b) Factors indicative of personal use may include without limitation the:

(1) Person did not make a delivery of methamphetamine;

(2) Quantity of methamphetamine manufactured by the person; or

(3) Method of manufacturing methamphetamine used by the person.

(3) A person who has one (1) or more prior convictions of manufacturing methamphetamine in any amount under this section or the former § 5-64-401 upon conviction is guilty of a Class Y felony.

(b)(1) Except as provided by this chapter, it is unlawful for a person to manufacture cocaine.

(2)(A) A person who manufactures cocaine in an amount less than two grams (2g) by aggregate weight, including an adulterant or diluent, upon conviction is guilty of a Class C felony.

(B) A person who manufactures cocaine in an amount of two grams (2g) or more but less than ten grams (10g), by aggregate weight, including an adulterant or diluent, upon conviction is guilty of a Class B felony.

(C) A person who manufactures cocaine in an amount of ten grams (10g) or more but less than two hundred grams (200g), by aggregate weight, including an adulterant or diluent, upon conviction is guilty of a Class Y felony.

(c)(1) Except as provided by this chapter, it is unlawful for a person to manufacture heroin.

(2)(A) A person who manufactures heroin in an amount less than two grams (2g) by aggregate weight, including an adulterant or diluent, upon conviction is guilty of a Class C felony.

(B) A person who manufactures heroin in an amount of two grams (2g) or more but less than ten grams (10g), by aggregate weight, including an adulterant or diluent, upon conviction is guilty of a Class B felony.

(C) A person who manufactures heroin in an amount of ten grams (10g) or more but less than two hundred grams (200g), by aggregate weight, including an adulterant or diluent, upon conviction is guilty of a Class Y felony.

History. Acts 2011, No. 570, § 47; 2021, No. 887, § 5.

Amendments. The 2021 amendment rewrote the section heading; and added (c).

CASE NOTES

Evidence Sufficient.

Sufficient evidence supported defendant's conviction for manufacturing methamphetamine where various items used in such manufacture along with defendant's identification card were found in a trailer where he was observed the night before his arrest. Coger v. State, 2017 Ark. App. 466, 529 S.W.3d 640 (2017).

5-64-424. Possession of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine with the purpose to deliver.

(a) Except as provided in this chapter, it is unlawful if a person possesses a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine with the purpose to deliver the Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine. Purpose to deliver may be shown by any of the following factors:

(1) The person possesses the means to weigh, separate, or package a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine;

(2) The person possesses a record indicating a drug-related transaction;

(3) The Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine is separated and packaged in a manner to facilitate delivery;

(4) The person possesses a firearm that is in the immediate physical control of the person at the time of the possession of the Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine;

(5) The person possesses at least two (2) other controlled substances in any amount; or

(6) Other relevant and admissible evidence that contributes to the proof that a person's purpose was to deliver a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine.

(b) A person who violates this section upon conviction is guilty of a:

(1) Class C felony if the person possessed by aggregate weight, including an adulterant or diluent, less than two grams (2g) of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine;

(2) Class B felony if the person possessed by aggregate weight, including an adulterant or diluent:

(A) Two grams (2g) or more but less than twenty-eight grams (28g) of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, cocaine, or a controlled substance listed in this subdivision (b)(2);

(B) Eighty (80) or more but less than one hundred sixty (160) dosage units of hydromorphone hydrochloride;

(C) Eighty (80) or more but less than one hundred sixty (160) dosage units of lysergic acid diethylamide (LSD);

(D) Eighty (80) or more but less than one hundred sixty (160) dosage units but not more than two hundred grams (200g) for any other Schedule I or Schedule II depressant or hallucinogenic drug; or

(E) Eighty (80) or more but less than one hundred sixty (160) dosage units but not more than two hundred grams (200g) for any other Schedule I or Schedule II stimulant drug; or

(3) Class A felony if the person possessed by aggregate weight, including an adulterant or diluent:

(A) Twenty-eight grams (28g) or more but less than two hundred grams (200g) of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, cocaine, or a controlled substance listed in this subdivision (b)(3);

(B) One hundred twenty-eight milligrams (128mg) or more or one hundred sixty (160) dosage units or more but less than two hundred grams (200g) of hydromorphone hydrochloride;

(C) One thousand six hundred micrograms (1,600μ) or more or one hundred sixty (160) dosage units or more but less than two hundred grams (200g) of lysergic acid diethylamide (LSD);

(D) One hundred sixty (160) dosage units or more regardless of weight but less than two hundred grams (200g) for any other Schedule I or Schedule II depressant or hallucinogenic drug; or

(E) One hundred sixty (160) dosage units or more regardless of weight but less than two hundred grams (200g) for any other Schedule I or Schedule II stimulant drug.

(c) It is a defense to a prosecution under this section that the person possessed less than the minimum listed amount of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine and that is listed in this section.

History. Acts 2011, No. 570, § 48; 2021, No. 887, § 5.

Amendments. The 2021 amendment inserted "fentanyl, heroin" in the section heading and throughout the section.

5-64-426. Delivery of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine.

(a) This section does not apply to the delivery of methamphetamine, fentanyl, heroin, or cocaine, which is governed by §§ 5-64-421 and 5-64-422.

(b) Except as provided in this chapter, it is unlawful for a person to deliver a Schedule I or Schedule II controlled substance.

(c) A person who violates this section upon conviction is guilty of a:

(1) Class C felony if the person delivered by aggregate weight, including an adulterant or diluent, less than two grams (2g) of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine;

(2) Class B felony if the person delivered by aggregate weight, including an adulterant or diluent:

(A) Two grams (2g) or more but less than twenty-eight grams (28g) of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, cocaine, or a controlled substance listed in this subdivision (c)(2);

(B) Eighty (80) or more but less than one hundred sixty (160) dosage units of hydromorphone hydrochloride;

(C) Eighty (80) or more but less than one hundred sixty (160) dosage units of lysergic acid diethylamide (LSD);

(D) Eighty (80) or more but less than one hundred sixty (160) dosage units but not more than two hundred grams (200g) for any other Schedule I or Schedule II depressant or hallucinogenic drug; or

(E) Eighty (80) or more but less than one hundred sixty (160) dosage units but not more than two hundred grams (200g) for any other Schedule I or Schedule II stimulant drug; or

(3) Class A felony if the person delivered by aggregate weight, including an adulterant or diluent:

(A) Twenty-eight grams (28g) or more but less than two hundred grams (200g) of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, cocaine, or a controlled substance listed in this subdivision (c)(3);

(B) One hundred sixty (160) dosage units or more but less than two hundred grams (200g) of hydromorphone hydrochloride;

(C) One hundred sixty (160) dosage units or more but less than two hundred grams (200g) of lysergic acid diethylamide (LSD);

(D) One hundred sixty (160) dosage units or more regardless of weight but less than two hundred grams (200g) for any other Schedule I or Schedule II depressant or hallucinogenic drug; or

(E) One hundred sixty (160) dosage units or more regardless of weight but less than two hundred grams (200g) for any other Schedule I or Schedule II stimulant drug.

History. Acts 2011, No. 570, § 49; 2021, No. 887, § 6.

Amendments. The 2021 amendment inserted "fentanyl, heroin" in the section heading and throughout the section; and inserted "§ 5-64-421 and" in (a).

CASE NOTES

Cited: Cave v. State, 2017 Ark. App. 212, 518 S.W.3d 134 (2017).

5-64-427. Manufacture of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine.

(a) This section does not apply to the manufacture of methamphetamine, fentanyl, heroin, or cocaine, which is governed by §§ 5-64-421 and 5-64-423.

(b) Except as provided by this chapter, it is unlawful for a person to manufacture a Schedule I or Schedule II controlled substance.

(c) A person who violates this section upon conviction is guilty of a:

(1) Class C felony if the person manufactured by aggregate weight, including an adulterant or diluent, less than two grams (2g) of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine;

(2) Class B felony if the person manufactured by aggregate weight, including an adulterant or diluent:

(A) Two grams (2g) or more but less than twenty-eight grams (28g) of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, cocaine, or a controlled substance listed in this subdivision (c)(2);

(B) Eighty (80) or more but less than one hundred sixty (160) dosage units of hydromorphone hydrochloride;

(C) Eighty (80) or more but less than one hundred sixty (160) dosage units of lysergic acid diethylamide (LSD);

(D) Eighty (80) or more but less than one hundred sixty (160) dosage units for any other Schedule I or Schedule II depressant or hallucinogenic drug regardless of weight; or

(E) Eighty (80) or more but less than one hundred sixty (160) dosage units for any other Schedule I or Schedule II stimulant drug regardless of weight; or

(3) Class A felony if the person manufactured by aggregate weight, including an adulterant or diluent:

(A) Twenty-eight grams (28g) or more of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, cocaine, or a controlled substance listed in this subdivision (c)(3);

(B) One hundred sixty (160) dosage units or more of hydromorphone hydrochloride;

(C) One hundred sixty (160) or more dosage units of lysergic acid diethylamide (LSD);

(D) One hundred sixty (160) dosage units or more regardless of weight for any other Schedule I or Schedule II depressant or hallucinogenic drug; or

(E) One hundred sixty (160) dosage units or more regardless of weight for any other Schedule I or Schedule II stimulant drug.

History. Acts 2011, No. 570, § 50; 2021, No. 887, § 6.

Amendments. The 2021 amendment inserted "fentanyl, heroin" in the section heading and throughout the section; and inserted "§ 5-64-421 and" in (a).

5-64-432. Possession of a Schedule IV or Schedule V controlled substance with the purpose to deliver.

CASE NOTES

Evidence Sufficient.

Sufficient evidence supported defendant's conviction of possession of a controlled substance with purpose to deliver; the plain language of this section requires only having a "purpose" to deliver, not actual delivery, and the jury could have inferred that had the price been right, defendant would have sold the pills. Furthermore, purpose to deliver could be shown by statutory factors, including possession of a firearm, which defendant had. Jimmerson v. State, 2019 Ark. App. 578, 590 S.W.3d 764 (2019).

5-64-436. Possession of a Schedule VI controlled substance with the purpose to deliver.

CASE NOTES

Analysis

Constructive Possession.
Delivery.

Constructive Possession.

There was substantial evidence that defendant constructively possessed marijuana to support his conviction for possession of a controlled substance with intent to deliver and sentence of 12 years' imprisonment. The 34 bags of marijuana were found in a large compartment under the truck-bed liner in a truck that defendant was driving; defendant did not own the truck and there were two passengers in the truck. There was fresh glue holding the metal plate down to cover the hidden compartment where the drugs were found, and there were remnants of the fresh glue on the glue gun found inside the truck's cab. Also, the tools necessary to access the hidden compartment were in the truck. Lockheart-Singleton v. State, 2018 Ark. App. 307 (2018).

Delivery.

Because the marijuana had been separated into 34 packages, which would have facilitated delivery, there was substantial evidence that defendant intended to deliver the controlled substance. Lockheart-Singleton v. State, 2018 Ark. App. 307 (2018).

5-64-439. Manufacture of a Schedule VI controlled substance.

CASE NOTES

Evidence Sufficient.

Appellant failed to preserve a challenge to his conviction for Class D manufacture of marijuana where he neither specifically moved for a directed verdict on the charge nor apprised the court of what element was not proven; and even if appellant had preserved the sufficiency argument, the expert's testimony as to the quantity of the marijuana analyzed was sufficient. Cogburn v. State, 2016 Ark. App. 543 (2016).

5-64-440. Trafficking a controlled substance.

(a) Except as provided by this chapter, it is unlawful for a person to engage in trafficking a controlled substance.

(b) A person engages in trafficking a controlled substance if he or she possesses, possesses with the purpose to deliver, delivers, or manufactures a controlled substance by aggregate weight, including an adulterant or diluent, in the following amounts:

(1) Methamphetamine, heroin, or cocaine, two hundred grams (200g) or more;

(2) Fentanyl, one gram (1g) or more;

(3) Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine, two hundred grams (200g) or more;

(4) Schedule III controlled substance, four hundred grams (400g) or more;

(5) Schedule IV or Schedule V controlled substance, eight hundred grams (800g) or more; or

(6) A Schedule VI controlled substance, five hundred pounds (500 lbs.) or more.

(c) Trafficking a controlled substance is a Class Y felony.

History. Acts 2011, No. 570, § 60; 2013, No. 529, § 4; 2021, No. 887, § 7.

Amendments. The 2021 amendment inserted "heroin" in (b)(1); inserted (b)(2) and redesignated the remaining subdivisions accordingly; and inserted "fentanyl, heroin" in (b)(3).

CASE NOTES

Analysis

Evidence Sufficient.
Jury Instructions.

Evidence Sufficient.

Defendant was properly convicted of trafficking in methamphetamine, possession of drug paraphernalia, and similar crimes because substantial evidence supported the jury's finding that he constructively possessed the contraband found in his home; bills in defendant's name were found in the bedroom along with men's clothing, defendant was physically present at the residence when officers arrived, and he told officers that whatever they found in their search of the home belonged to him. Harjo v. State, 2017 Ark. App. 337, 522 S.W.3d 839 (2017).

Evidence supported defendant's conviction for trafficking a controlled substance because the State produced evidence of defendant's care, control, management, and knowledge of the contraband found in defendant's suitcase during a traffic stop of the vehicle that defendant was driving with a passenger in the vehicle. The State submitted audio-videos from the police stop, defendant's interview statement, and the testimony and report of a forensic chemist who determined the contraband to be powder cocaine, along with a cutting agent. Pacheco-Alvarez v. State, 2017 Ark. App. 695, 540 S.W.3d 692 (2017).

Jury Instructions.

Although the trial court erred in giving a nonmodel jury instruction on the methamphetamine trafficking charge because the model instruction on trafficking accurately stated the law, the error was harmless because the erroneous instruction was obviously cured by other instructions. Harmon v. State, 2020 Ark. 217, 600 S.W.3d 586 (2020).

5-64-443. Possession of drug paraphernalia.

(a) A person who possesses drug paraphernalia with the purpose to use the drug paraphernalia to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance or to store, contain, conceal, or weigh a controlled substance in violation of this chapter upon conviction is guilty of:

(1) A Class A misdemeanor; or

(2) A Class D felony if the:

(A) Controlled substance is methamphetamine, heroin, fentanyl, or cocaine; and

(B) Person has been previously convicted of a violation of this chapter.

(b) A person who uses or possesses with the purpose to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, or repack a controlled substance in violation of this chapter upon conviction is guilty of a:

(1) Class D felony; or

(2) Class B felony if the controlled substance is methamphetamine, heroin, fentanyl, or cocaine.

(c) When the same conduct of a defendant may establish the commission of more than one (1) offense under this section, the defendant may only be convicted of one (1) offense under this section.

History. Acts 2011, No. 570, § 63; 2017, No. 888, § 1; 2019, No. 1014, § 1; 2021, No. 453, § 2.

Amendments. The 2017 amendment substituted "or repack" for "repack, store, contain, or conceal" in (b) and (d); inserted present (c) and redesignated former (c) as (d); and added (e).

The 2019 amendment inserted "heroin, fentanyl" throughout the section; and made stylistic changes.

The 2021 amendment added "Possession of" in the section heading; inserted "or to store, contain, conceal, or weigh a controlled substance" in the introductory language of (a); added (a)(2)(B); rewrote (b) and (c); and deleted (d) and (e).

CASE NOTES

Analysis

Evidence Sufficient.
—Methamphetamine Manufacture.
Possession.

Evidence Sufficient.

Evidence was sufficient to sustain a conviction for possession of drug paraphernalia under subsection (b) of this section, where the informant testified that defendant had used a scale to weigh the drugs. Childers v. State, 2016 Ark. App. 371, 498 S.W.3d 742 (2016).

Substantial evidence supported defendant's convictions for possession of methamphetamine and drug paraphernalia, where the testimony showed that he had tossed and hid items in an attempt to conceal them from the police, and the police recovered a baggie and a pipe that were thrown out of the side of the vehicle. Payne v. State, 2017 Ark. App. 263, 520 S.W.3d 719 (2017).

Sufficient evidence supported defendant's conviction for possessing drug paraphernalia to ingest methamphetamine because an officer found such items when conducting an inventory search of defendant's vehicle. Coger v. State, 2017 Ark. App. 466, 529 S.W.3d 640 (2017).

Because defendant's motion for a directed verdict on possession of drug paraphernalia did not inform the circuit court of the specific issues in the State's case that were now being challenged, the question of the sufficiency of evidence was not preserved for appeal; even so, the evidence was sufficient, as defendant informed the deputy that everything in the vehicle belonged to him and that the other occupants had nothing to do with the narcotics. Martin v. State, 2019 Ark. App. 19, 567 S.W.3d 558 (2019).

Substantial evidence supported defendant's convictions for possession of methamphetamine and drug paraphernalia because the officer testified that he observed aluminum foil fall out of defendant's right pants leg at the detention center, he also discovered a piece of nitrile glove that contained a small baggie of white crystalline substance inside the aluminum foil, defendant later admitted that it contained methamphetamine, and the substance tested positive for methamphetamine. Haney v. State, 2020 Ark. App. 341, 602 S.W.3d 154 (2020).

—Methamphetamine Manufacture.

Sufficient evidence supported defendant's conviction for possessing drug paraphernalia to manufacture methamphetamine as items necessary for the manufacture of methamphetamine were found in a trailer in which defendant's identification card was also found and in which he was observed the night before his arrest. Coger v. State, 2017 Ark. App. 466, 529 S.W.3d 640 (2017).

Possession.

Evidence was sufficient to support defendant's convictions of felony theft by

receiving, possession of methamphetamine, and possession of drug paraphernalia, as defendant was in constructive possession of the contraband found at the residence; although another individual also was in the residence at the time of the search, defendant had listed the residence as his address, the contraband was found in plain view in common areas in and around the house, and the fact that defendant was in a bedroom hiding under a bed when the search commenced did not negate the additional factors linking him to the contraband. Mudd v. State, 2018 Ark. App. 628, 565 S.W.3d 154 (2018).

Substantial evidence supported defendant's convictions for possession of methamphetamine and possession of paraphernalia because (1) defendant admitted she had smoked methamphetamine that day, (2) defendant owned the house where the methamphetamine was found hidden in a water-heater closet, (3) defendant could not disclaim possession due to being absent when the search warrant was executed, (4) the jury was not required to believe defendant's testimony suggesting that another person had hid the drugs in her residence, and (5) defendant's knowledge of and control over the contraband found in her residence could be inferred from the circumstances. Knauls v. State, 2020 Ark. App. 48, 593 S.W.3d 58 (2020).

Evidence was insufficient to support defendant's conviction of possession of drug paraphernalia because the State did not present substantial evidence that defendant constructively possessed a methamphetamine pipe that was found in a tin inside a kitchen cabinet in a jointly occupied house. Another occupant was the only person present when the search warrant was executed, and he was found with methamphetamine and paraphernalia on his person and admitted using it. The jury would have had to speculate to conclude that the pipe belonged to defendant rather than someone else. Garner v. State, 2020 Ark. App. 101, 594 S.W.3d 145 (2020).

Although the evidence was circumstantial that defendant had constructive possession over the contraband found in her home, her behavior when asking for her medication, description of the bag containing her medication and exactly where it would be located in the house she jointly occupied with her daughter, the existence of multiple bottles of prescription medication with defendant's name being inside the bag with the contraband, and defendant's denial of ownership showed that she exercised care, control, and management over the contraband and that she knew the matter possessed was contraband. Richard v. State, 2021 Ark. App. 25, 615 S.W.3d 759 (2021).

Sufficient evidence supported defendant's jury convictions for possession of drug paraphernalia and possession of a controlled substance; after stopping and searching defendant for a traffic violation, a police officer found methamphetamine in a breath mint tin on the ground near a spot where both defendant and his passenger stood, defendant had just been observed leaving a business known for illegal drug sales, a pipe was found on the driver's seat of the vehicle, defendant owned the vehicle and was driving at the time of the stop, and the officer's dash-cam video showed defendant doing something that could reasonably be interpreted as removing an item from his pocket and dropping it on the ground in the same spot where the tin was discovered. Morgan v. State, 2021 Ark. App. 220 (2021).

Cited: A.W. v. State, 2017 Ark. App. 34, 510 S.W.3d 811 (2017).

5-64-445. Advertisement of a counterfeit substance or drug paraphernalia.

RESEARCH REFERENCES

ALR. Construction and Application of § 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (8 U.S.C. § 1182(a)(2)(A)(i)(II)), and Predecessor Provision, Rendering Inadmissible Any Alien Convicted of, or Who Admits to, Violating Federal, State, or Foreign Laws Relating to Controlled Substances. 93 A.L.R. Fed. 2d 1 (2015).

Subchapter 5 — Uniform Controlled Substances Act — Enforcement and Administration

SECTION.
5-64-501. Powers of officials generally.
5-64-504. Intergovernmental cooperation — Identities of patients and research subjects.
5-64-505. Property subject to forfeiture — Procedure — Disposition of property.
5-64-507. Conclusiveness of findings.
5-64-508. Prevention and deterrence — Educational and research programs.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

5-64-501. Powers of officials generally.

Any law enforcement officer, any person authorized to enforce this chapter, or any employee of the Department of Health designated by the Secretary of the Department of Health to conduct an examination, investigation, or inspection under this chapter relating to a controlled substance or to a counterfeit drug may:

(1) Carry a firearm in the performance of his or her official duties;

(2) Execute and serve a search warrant, arrest warrant, administrative inspection warrant, subpoena, or summons issued under the authority of this state;

(3) Make an arrest without warrant for any offense under this chapter committed in his or her presence, or if he or she has probable cause to believe that the person to be arrested has committed a violation of this chapter that may constitute a felony;

(4) Make a seizure of property pursuant to this chapter; or

(5) Perform any other law enforcement duty as the secretary designates.

History. Acts 1971, No. 590, Art. 5, § 1; 1972 (1st Ex. Sess.), No. 67, § 5; 1979, No. 898, § 14; A.S.A. 1947, § 82-2625; Acts 2005, No. 1994, § 308; 2019, No. 910, § 4846.

Amendments. The 2019 amendment substituted "Secretary" for "Director" in the introductory language; and substituted "secretary" for "director" in (5).

5-64-504. Intergovernmental cooperation — Identities of patients and research subjects.

(a)(1) The Secretary of the Department of Health shall cooperate with federal and any other state agency in discharging the agency's responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances.

(2) To this end, the secretary may:

(A) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(B) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;

(C)(i) Cooperate with the United States Drug Enforcement Administration by establishing a centralized unit to accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state and make the information available for federal, state, and local law enforcement purposes.

(ii) The secretary shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under subsection (c) of this section; and

(D) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information, and evidence received from the United States Drug Enforcement Administration relating to the regulatory functions of this chapter, including a result of an inspection conducted by the United States Drug Enforcement Administration, may be relied and acted upon by the secretary in the exercise of the Department of Health's regulatory functions under this chapter.

(c) A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the secretary nor may he or she be compelled in any state or local civil, criminal, administrative, legislative, or other proceeding to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

History. Acts 1971, No. 590, Art. 5, § 4; A.S.A. 1947, § 82-2628; Acts 2005, No. 1994, § 309; 2019, No. 910, § 4847.

Amendments. The 2019 amendment substituted "Secretary" for "Director" in (a)(1).

5-64-505. Property subject to forfeiture — Procedure — Disposition of property.

(a) Items Subject to Forfeiture. The following are subject to forfeiture upon the initiation of a civil proceeding filed by the prosecuting attorney and when so ordered by the circuit court in accordance with this section, however no property is subject to forfeiture based solely upon a misdemeanor possession of a Schedule III, Schedule IV, Schedule V, or Schedule VI controlled substance:

(1) Any controlled substance or counterfeit substance that has been manufactured, distributed, dispensed, or acquired in violation of this chapter;

(2) Any raw material, product, or equipment of any kind that is used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance or counterfeit substance in violation of this chapter;

(3) Any property that is used, or intended for use, as a container for property described in subdivision (a)(1) or subdivision (a)(2) of this section;

(4) Any conveyance, including an aircraft, vehicle, or vessel that is used or intended for use to transport or in any manner to facilitate the transportation for the purpose of sale or receipt of property described in subdivision (a)(1) or subdivision (a)(2) of this section, however:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(B)(i) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without his or her knowledge or consent.

(ii) Upon a showing described in subdivision (a)(4)(B)(i) of this section by the owner or interest holder, the conveyance may nevertheless be forfeited if the prosecuting attorney establishes that the owner or interest holder either knew or should reasonably have known that the conveyance would be used to transport or in any manner to facilitate the transportation for the purpose of sale or receipt of property described in subdivision (a)(1) or subdivision (a)(2) of this section;

(C) A conveyance is not subject to forfeiture for a violation of §§ 5-64-419 and 5-64-441; and

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission;

(5) Any book, record, or research product or material, including a formula, microfilm, tape, or data that is used, or intended for use, in violation of this chapter;

(6)(A) Anything of value, including firearms, furnished or intended to be furnished in exchange for a controlled substance or counterfeit substance in violation of this chapter, any proceeds or profits traceable to the exchange, and any money, negotiable instrument, or security used, or intended to be used, to facilitate any violation of this chapter.

(B) However, no property shall be forfeited under this subdivision (a)(6) to the extent of the interest of an owner by reason of any act or

omission established by him or her, by a preponderance of the evidence, to have been committed or omitted without his or her knowledge or consent;

(7) Rebuttable Presumptions.

(A) Any money, coin, currency, or firearms found in close proximity to a forfeitable controlled substance, a counterfeit substance, forfeitable drug manufacturing or distributing paraphernalia, or a forfeitable record of an importation, manufacture, or distribution of a controlled substance or counterfeit substance is presumed to be forfeitable under this subdivision (a)(7).

(B) The burden of proof is upon a claimant of the property to rebut this presumption by a preponderance of the evidence; and

(8) Real property may be forfeited under this chapter if it substantially assisted in, facilitated in any manner, or was used or intended for use in the commission of any act prohibited by this chapter, however:

(A) No real property is subject to forfeiture under this chapter by reason of any act or omission established by the owner of the real property by a preponderance of the evidence to have been committed or omitted without his or her knowledge or consent;

(B) Real property is not subject to forfeiture for a violation of § 5-64-419, if the offense is a Class C felony or less, or § 5-64-441;

(C) A forfeiture of real property encumbered by a mortgage or other lien is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the unlawful act or omission;

(D) Upon conviction, when the circuit court having jurisdiction over the real property seized finds upon a hearing by a preponderance of the evidence that grounds for a forfeiture exist under this section, the court shall enter an order consistent with subsection (h) of this section;

(E) When any court orders a forfeiture of real property under this chapter, the order shall be filed of record on the day issued and shall have prospective effect only;

(F) A forfeiture of real property ordered under a provision of this chapter does not affect the title of a bona fide purchaser who purchased the real property prior to the issuance of the order, and the order has no force or effect on the title of the bona fide purchaser; and

(G) Any lis pendens filed in connection with any action pending under a provision of this chapter that might result in the forfeiture of real property is operative only from the time filed and has no retroactive effect.

(b) Seizure and Summary Forfeiture of Contraband. The following items are deemed contraband and may be seized and summarily forfeited to the state:

(1) A controlled substance listed in Schedule I that is possessed, transferred, sold, or offered for sale in violation of this chapter and a controlled substance listed in Schedule I that is seized or comes into the possession of the state and the owner of the controlled substance is unknown;

(2)(A) A species of a plant from which a controlled substance in Schedule I, Schedule II, or Schedule VI may be derived and:

(i) The plant has been planted or cultivated in violation of this chapter;

(ii) The plant's owner or cultivator is unknown; or

(iii) The plant is a wild growth.

(B) Upon demand by a seizing law enforcement agency, the failure of a person in occupancy or in control of land or premises where the species of plant is growing or being stored, to produce an appropriate registration or proof that he or she is the holder of an appropriate registration, constitutes authority for the seizure and forfeiture of the plant; and

(3) Any drug paraphernalia or counterfeit substance except in the possession or control of a practitioner in the course of professional practice or research.

(c) SEIZURE OF PROPERTY. Property subject to forfeiture under this chapter may be seized by any law enforcement agent upon process issued by any circuit court having jurisdiction over the property on petition filed by the prosecuting attorney of the judicial circuit. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) The seizing law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The seizing law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(d) TRANSFER OF PROPERTY SEIZED BY STATE OR LOCAL AGENCY TO FEDERAL AGENCY.

(1) No state or local law enforcement agency may transfer any property seized by the state or local agency to any federal entity for forfeiture under federal law unless the circuit court having jurisdiction over the property enters an order, upon petition by the prosecuting attorney, authorizing the property to be transferred to the federal entity.

(2) The transfer shall not be approved unless it reasonably appears that the activity giving rise to the investigation or seizure involves more than one (1) state or the nature of the investigation or seizure would be better pursued under federal law.

(e) CUSTODY OF PROPERTY PENDING DISPOSITION.

(1) Property seized for forfeiture under this section is not subject to replevin, but is deemed to be in the custody of the seizing law enforcement agency subject only to an order or decree of the circuit court having jurisdiction over the property seized.

(2) Subject to any need to retain the property as evidence, when property is seized under this chapter the seizing law enforcement agency may:

(A) Remove the property to a place designated by the circuit court;

(B) Place the property under constructive seizure posting notice of pending forfeiture on it, by giving notice of pending forfeiture to its owners and interest holders, or by filing notice of pending forfeiture in any appropriate public record relating to the property;

(C) Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money, or is not needed for evidentiary purposes, deposit it in an interest-bearing account; or

(D) Provide for another agency or custodian, including an owner, secured party, mortgagee, or lienholder, to take custody of the property and service, maintain, and operate it as reasonably necessary to maintain its value in any appropriate location within the jurisdiction of the court.

(3)(A) In any case of transfer of property, a transfer receipt shall be prepared by the transferring agency.

(B) The transfer receipt shall:

(i) List a detailed and complete description of the property being transferred;

(ii) State to whom the property is being transferred and the source or authorization for the transfer; and

(iii) Be signed by both the transferor and the transferee.

(C) Both transferor and transferee shall maintain a copy of the transfer receipt.

(4) A person who acts as custodian of property under this section is not liable to any person on account of an act done in a reasonable manner in compliance with an order under this chapter.

(f) Inventory of Property Seized — Referral to Prosecuting Attorney.

(1) Any property seized by a state or local law enforcement officer who is detached to, deputized or commissioned by, or working in conjunction with a federal agency remains subject to the provisions of this section.

(2)(A) When property is seized for forfeiture by a law enforcement agency, the seizing law enforcement officer shall prepare and sign a confiscation report.

(B)(i) The party from whom the property is seized shall also sign the confiscation report if present and shall immediately receive a copy of the confiscation report.

(ii) If the party refuses to sign the confiscation report, the confiscation report shall be signed by one (1) additional law enforcement officer, stating that the party refused to sign the confiscation report.

(C) The original confiscation report shall be:

(i) Filed with the seizing law enforcement agency within forty-eight (48) hours after the seizure; and

(ii) Maintained in a separate file.

(D) One (1) copy of the confiscation report shall be retained by the seizing law enforcement officer.

(3) The confiscation report shall contain the following information:

(A) A detailed description of the property seized including any serial or model numbers and odometer or hour reading of vehicles or equipment;

(B) The date of seizure;

(C) The name and address from whom the property was seized;

(D) The reason for the seizure;

(E) Where the property will be held;

(F) The seizing law enforcement officer's name; and

(G) A signed statement by the seizing law enforcement officer stating that the confiscation report is true and complete.

(4) Within three (3) business days of receiving the confiscation report, the seizing law enforcement agency shall forward a copy of the confiscation report to the prosecuting attorney for the district where the property was seized and to the Arkansas Drug Director.

(5)(A) Arkansas Legislative Audit shall notify the Arkansas Alcohol and Drug Abuse Coordinating Council and a circuit court in the county of a law enforcement agency, prosecuting attorney, or other public entity that the law enforcement agency, prosecuting attorney, or public entity is ineligible to receive any forfeited funds, forfeited property, or any grants from the council, if Arkansas Legislative Audit determines, by its own investigation or upon written notice from the Arkansas Drug Director, that:

(i) The law enforcement agency has failed to complete and file the confiscation reports as required by this section;

(ii) The law enforcement agency, prosecuting attorney, or public entity has not properly accounted for any seized property; or

(iii) The prosecuting attorney has failed to comply with the notification requirement set forth in subdivision (i)(1) of this section.

(B) After the notice, the circuit court shall not issue any order distributing seized property to that law enforcement agency, prosecuting attorney, or public entity nor shall any grant be awarded by the council to that law enforcement agency, prosecuting attorney, or public entity until:

(i) The appropriate officials of the law enforcement agency, prosecuting attorney, or public entity have appeared before the Legislative Joint Auditing Committee; and

(ii) The Legislative Joint Auditing Committee has adopted a motion authorizing subsequent transfers of forfeited property to the law enforcement agency, prosecuting attorney, or public entity.

(C)(i) While a law enforcement agency, prosecuting attorney, or other public entity is ineligible to receive forfeited property, the circuit court shall order any money that would have been distributed to that law enforcement agency, prosecuting attorney, or public entity to be transmitted to the Treasurer of State for deposit into the Crime Lab Equipment Fund.

(ii) If the property is other than cash, the circuit court shall order the property converted to cash pursuant to subdivision (h)(1)(B) of

this section and the proceeds transmitted to the Treasurer of State for deposit into the Crime Lab Equipment Fund.

(D) Moneys deposited into the Crime Lab Equipment Fund pursuant to subdivision (f)(5)(C) of this section are not subject to recovery or retrieval by the ineligible law enforcement agency, prosecuting attorney, or other public entity.

(6) The Arkansas Drug Director shall establish through rules a standardized confiscation report form to be used by all law enforcement agencies with specific instructions and guidelines concerning the nature and dollar value of all property, including firearms, to be included in the confiscation report and forwarded to the office of the local prosecuting attorney and the Arkansas Drug Director under this subsection.

(g) Initiation of Forfeiture Proceedings — Notice to Claimants — Judicial Proceedings.

(1)(A) The prosecuting attorney shall initiate forfeiture proceedings by filing a complaint with the circuit clerk of the county where the property was seized and by serving the complaint on all known owners and interest holders of the seized property in accordance with the Arkansas Rules of Civil Procedure.

(B) The complaint may be based on in rem or in personam jurisdiction but shall not be filed in such a way as to avoid the distribution requirements set forth in subdivision (i)(1) of this section.

(C) The prosecuting attorney shall mail a copy of the complaint to the Arkansas Drug Director within five (5) calendar days after filing the complaint.

(2)(A) The complaint shall include a copy of the confiscation report and shall be filed within sixty (60) days after receiving a copy of the confiscation report from the seizing law enforcement agency.

(B) In a case involving real property, the complaint shall be filed within sixty (60) days of the defendant's conviction on the charge giving rise to the forfeiture.

(3)(A) The prosecuting attorney may file the complaint after the expiration of the time set forth in subdivision (g)(2) of this section only if the complaint is accompanied by a statement of good cause for the late filing.

(B) However, in no event shall the complaint be filed more than one hundred twenty (120) days after either the date of the seizure or, in a case involving real property, the date of the defendant's conviction.

(C) If the circuit court determines that good cause has not been established, the circuit court shall order that the seized property be returned to the owner or interest holder. In addition, items seized but not subject to forfeiture under this section or subject to disposition pursuant to law or the Arkansas Rules of Criminal Procedure may be ordered returned to the owner or interest holder. If the owner or interest holder cannot be determined, the court may order disposition of the property in accordance with subsection (h) of this section.

(4)(A) Subject to the Arkansas Rules of Civil Procedure, with regard to a person arrested for an offense giving rise to a forfeiture action, the owner or interest holder of the seized property shall file with the circuit clerk an answer to the complaint that shall include:

(i) A statement describing the seized property and the owner's or interest holder's interest in the seized property, with supporting documents to establish the owner's or interest holder's interest;

(ii) A certification by the owner or interest holder stating that he or she has read the answer and that it is not filed for any improper purpose;

(iii) A statement setting forth any defense to forfeiture; and

(iv) The address at which the owner or interest holder accepts mail.

(B) With regard to a third party not arrested for an offense giving rise to a forfeiture action, within forty-five (45) days of service of process the owner or interest holder of the seized property shall file with the circuit clerk an answer to the complaint.

(5)(A) If the owner or interest holder fails to file an answer as required by subdivision (g)(4) of this section, the prosecuting attorney may move for default judgment pursuant to the Arkansas Rules of Civil Procedure.

(B)(i) If a timely answer has been filed, the prosecuting attorney has the following burden of proof:

(a) With regard to a person arrested for an offense giving rise to the forfeiture action, the prosecuting attorney shall prove by a preponderance of the evidence that the seized property should be forfeited; or

(b) With regard to a third party not arrested for an offense giving rise to the forfeiture action, the prosecuting attorney shall prove by clear and convincing evidence that the seized property should be forfeited.

(ii) After the prosecuting attorney has presented proof under subdivision (g)(5)(B)(i) of this section, any owner or interest holder of the property seized is allowed to present evidence why the seized property should not be forfeited.

(iii)*(a)* If the circuit court determines that grounds for forfeiting the seized property exist and that no defense to forfeiture has been established by the owner or interest holder, the circuit court shall enter an order pursuant to subsection (h) of this section.

(b) However, if the circuit court determines either that the prosecuting attorney has failed to establish that grounds for forfeiting the seized property exist or that the owner or interest holder has established a defense to forfeiture, the court shall order that the seized property be immediately returned to the owner or interest holder.

(h) Final Disposition.

(1) When the circuit court having jurisdiction over the seized property finds upon a hearing by a preponderance of the evidence that

grounds for a forfeiture exist under this chapter, the circuit court shall enter an order:

(A) To permit the law enforcement agency or prosecuting attorney to retain the seized property for law enforcement or prosecutorial purposes, subject to the following provisions:

(i)*(a)* Seized property may not be retained for official use for more than two (2) years, unless the circuit court finds that the seized property has been used for law enforcement or prosecutorial purposes and authorizes continued use for those purposes on an annual basis.

(b) At the end of the retention period, the seized property shall be sold as provided in subdivision (h)(1)(B) of this section and:

(1) Eighty percent (80%) of the proceeds shall be deposited into the drug control fund of the retaining law enforcement agency or prosecuting attorney; and

(2) Twenty percent (20%) of the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Crime Lab Equipment Fund.

(c)(1) Nothing prohibits the retaining law enforcement agency or prosecuting attorney from selling the retained seized property at any time during the time allowed for retention.

(2) However, the proceeds of the sale shall be distributed as set forth in subdivision (h)(1)(A)(i)*(b)* of this section;

(ii) If the circuit court determines that retained seized property has been used for personal use or by non-law enforcement personnel for non-law enforcement purposes, the circuit court shall order the seized property to be sold pursuant to the provisions of § 5-5-101(e) and (f), and the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Crime Lab Equipment Fund;

(iii)*(a)* A drug task force may use forfeited property or money if the circuit court's order specifies that the forfeited property or money is forfeited to the prosecuting attorney, county sheriff, chief of police, Division of Arkansas State Police, or Arkansas Highway Police Division of the Arkansas Department of Transportation.

(b) After the order, the prosecuting attorney, county sheriff, chief of police, Division of Arkansas State Police, or Arkansas Highway Police Division of the Arkansas Department of Transportation shall:

(1) Maintain an inventory of the forfeited property or money;

(2) Be accountable for the forfeited property or money; and

(3) Be subject to the provisions of subdivision (f)(5) of this section with respect to the forfeited property or money;

(iv)*(a)* Any aircraft is forfeited to the office of the Arkansas Drug Director and may only be used for drug eradication or drug interdiction efforts, within the discretion of the Arkansas Drug Director.

(b) However, if the Arkansas Alcohol and Drug Abuse Coordinating Council determines that the aircraft should be sold, the sale shall be conducted pursuant to the provisions of § 5-5-101(e) and (f), and the proceeds of the sale shall be deposited into the Special State Assets Forfeiture Fund;

(v) Any firearm not retained for official use shall be disposed of in accordance with state and federal law; and

(vi) Any controlled substance, plant, drug paraphernalia, or counterfeit substance shall be destroyed pursuant to a court order;

(B)(i) To sell seized property that is not required by law to be destroyed and that is not harmful to the public.

(ii) Seized property described in subdivision (h)(1)(B)(i) of this section shall be sold at a public sale by the retaining law enforcement agency or prosecuting attorney pursuant to the provisions of § 5-5-101(e) and (f); or

(C) To transfer a motor vehicle to a school district for use in a driver education course.

(2) Disposition of forfeited property pursuant to this subsection is subject to the need to retain the forfeited property as evidence in any related proceeding.

(3) Within three (3) business days of the entry of the order, the circuit clerk shall forward to the Arkansas Drug Director copies of the confiscation report, the circuit court's order, and any other documentation detailing the disposition of the seized property.

(i) Disposition of Moneys Received. Subject to the provisions of subdivision (f)(5) of this section, the proceeds of sales conducted pursuant to subdivision (h)(1)(B) of this section and any moneys forfeited or obtained by judgment or settlement pursuant to this chapter shall be deposited and distributed in the manner set forth in this subsection. Moneys received from a federal forfeiture shall be deposited and distributed pursuant to subdivision (i)(4) of this section.

(1) Asset Forfeiture Fund.

(A) The proceeds of any sale and any moneys forfeited or obtained by judgment or settlement under this chapter shall be deposited into the asset forfeiture fund of the prosecuting attorney and is subject to the following provisions:

(i) If, during a calendar year, the aggregate amount of moneys deposited into the asset forfeiture fund exceeds twenty thousand dollars ($20,000) per county, the prosecuting attorney shall, within fourteen (14) days of that time, notify the circuit judges in the judicial district and the Arkansas Drug Director;

(ii) Subsequent to the notification set forth in subdivision (i)(1)(A)(i) of this section, twenty percent (20%) of the proceeds of any additional sale and any additional moneys forfeited or obtained by judgment or settlement under this chapter in the same calendar year shall be deposited into the State Treasury as special revenues to be credited to the Crime Lab Equipment Fund, and the remainder shall be deposited into the asset forfeiture fund of the prosecuting attorney;

(iii) Failure by the prosecuting attorney to comply with the notification requirement set forth in subdivision (i)(1)(A)(i) of this section renders the prosecuting attorney and any entity eligible to receive forfeited moneys or property from the prosecuting attorney ineligible

to receive forfeited moneys or property, except as provided in subdivision (f)(5)(A) of this section; and

(iv) Twenty percent (20%) of any moneys in excess of twenty thousand dollars ($20,000) that have been retained but not reported as required by subdivision (i)(1)(A)(i) of this section are subject to recovery for deposit into the Crime Lab Equipment Fund.

(B) The prosecuting attorney shall administer expenditures from the asset forfeiture fund which is subject to audit by Arkansas Legislative Audit. Moneys distributed from the asset forfeiture fund shall only be used for law enforcement and prosecutorial purposes. Moneys in the asset forfeiture fund shall be distributed in the following order:

(i) For satisfaction of any bona fide security interest or lien;

(ii) For payment of any proper expense of the proceeding for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs;

(iii) Any balance under two hundred fifty thousand dollars ($250,000) shall be distributed proportionally so as to reflect generally the contribution of the appropriate local or state law enforcement or prosecutorial agency's participation in any activity that led to the seizure or forfeiture of the property or deposit of moneys under this chapter; and

(iv) Any balance over two hundred fifty thousand dollars ($250,000) shall be forwarded to the Arkansas Drug Director to be transferred to the State Treasury for deposit into the Special State Assets Forfeiture Fund for distribution as provided in subdivision (i)(3) of this section.

(C)(i) For a forfeiture in an amount greater than two hundred fifty thousand dollars ($250,000) from which expenses are paid for a proceeding for forfeiture and sale under subdivision (i)(1)(B)(ii) of this section, an itemized accounting of the expenses shall be delivered to the Arkansas Drug Director within ten (10) calendar days after the distribution of the funds.

(ii) The itemized accounting shall include the expenses paid, to whom paid, and for what purposes the expenses were paid.

(2) Drug Control Fund.

(A)(i) There is created on the books of law enforcement agencies and prosecuting attorneys a drug control fund.

(ii) The drug control fund shall consist of any moneys obtained under subdivision (i)(1) of this section and any other revenue as may be provided by law or ordinance.

(iii) Moneys from the drug control fund may not supplant other local, state, or federal funds.

(iv) Moneys in the drug control fund are appropriated on a continuing basis and are not subject to the Revenue Stabilization Law, § 19-5-101 et seq.

(v) Moneys in the drug control fund shall only be used for law enforcement and prosecutorial purposes, including without limita-

tion to provide a grant of up to one thousand dollars ($1,000) to the family of a law enforcement officer who dies in the prosecuting attorney's jurisdiction.

(vi) The drug control fund is subject to audit by Arkansas Legislative Audit.

(B) The law enforcement agencies and prosecuting attorneys shall submit to the Arkansas Drug Director on or before January 1 and July 1 of each year a report detailing any moneys received and expenditure made from the drug control fund during the preceding six-month period.

(3) Special State Assets Forfeiture Fund.

(A) There is created and established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Special State Assets Forfeiture Fund".

(B)(i) The Special State Assets Forfeiture Fund shall consist of revenues obtained under subdivision (i)(1)(B)(iv) of this section and any other revenue as may be provided by law.

(ii) Moneys from the Special State Assets Forfeiture Fund may not supplant other local, state, or federal funds.

(C) The Special State Assets Forfeiture Fund is not subject to the provisions of the Revenue Stabilization Law, § 19-5-101 et seq., or the Special Revenue Fund Account of the State Apportionment Fund, § 19-5-203(b)(2)(A).

(D)(i) The Arkansas Drug Director shall establish through rules a procedure for proper investment, use, and disposition of state moneys deposited into the Special State Assets Forfeiture Fund in accordance with the intent and purposes of this chapter.

(ii) State moneys in the Special State Assets Forfeiture Fund shall be distributed by the Arkansas Alcohol and Drug Abuse Coordinating Council and shall be distributed for drug interdiction, eradication, education, rehabilitation, the State Crime Laboratory, and drug courts.

(4) Federal Forfeitures.

(A)(i)*(a)* Any moneys received by a prosecuting attorney or law enforcement agency from a federal forfeiture shall be deposited and maintained in a separate account.

(b) However, any balance over two hundred fifty thousand dollars ($250,000) shall be distributed as set forth in subdivision (i)(4)(B) of this section.

(ii) No other moneys may be maintained in the account except for any interest income generated by the account.

(iii) Moneys in the account shall only be used for law enforcement and prosecutorial purposes consistent with governing federal law.

(iv) The account is subject to audit by Arkansas Legislative Audit.

(B)(i) Any balance over two hundred fifty thousand dollars ($250,000) shall be forwarded to the Division of Arkansas State Police to be transferred to the State Treasury for deposit into the Special State Assets Forfeiture Fund in which it shall be maintained sepa-

rately and distributed consistent with governing federal law and upon the advice of the Arkansas Alcohol and Drug Abuse Coordinating Council.

(ii) Of the moneys contained in the Special State Assets Forfeiture Fund at the beginning of each fiscal year, no more than:

(a) Twenty-five percent (25%) shall be retained by the Division of Arkansas State Police to be used for law enforcement purposes consistent with governing federal law; and

(b) Sixty-five percent (65%) may be distributed among other state and local law enforcement agencies to be used for law enforcement purposes consistent with federal law.

(iii) With the advice of the Arkansas Alcohol and Drug Abuse Coordinating Council, the Division of Arkansas State Police shall promulgate rules and procedures for the distribution by an allocation formula of moneys set forth in subdivision (i)(4)(B)(ii)*(b)* of this section.

(j) In Personam Proceedings. In personam jurisdiction may be based on a person's presence in the state, or on his or her conduct in the state, as set out in § 16-4-101(C), and is subject to the following additional provisions:

(1) A temporary restraining order under this section may be entered ex parte on application of the state, upon a showing that:

(A) There is probable cause to believe that the property with respect to which the order is sought is subject to forfeiture under this section; and

(B) Notice of the action would jeopardize the availability of the property for forfeiture;

(2)(A) Notice of the entry of a temporary restraining order and an opportunity for hearing shall be afforded to a person known to have an interest in the property.

(B) The hearing shall be held at the earliest possible date consistent with Rule 65 of the Arkansas Rules of Civil Procedure and is limited to the issues of whether:

(i) There is a probability that the state will prevail on the issue of forfeiture and that failure to enter the temporary restraining order will result in the property's being destroyed, conveyed, alienated, encumbered, disposed of, received, removed from the jurisdiction of the circuit court, concealed, or otherwise made unavailable for forfeiture; and

(ii) The need to preserve the availability of property through the entry of the requested temporary restraining order outweighs the hardship on any owner or interest holder against whom the temporary restraining order is to be entered;

(3) The state has the burden of proof by a preponderance of the evidence to show that the defendant's property is subject to forfeiture;

(4)(A) On a determination of liability of a person for conduct giving rise to forfeiture under this section, the circuit court shall enter a judgment of forfeiture of the property subject to forfeiture as alleged

in the complaint and may authorize the prosecuting attorney or any law enforcement officer to seize any property subject to forfeiture pursuant to subsection (a) of this section not previously seized or not then under seizure.

(B) The order of forfeiture shall be consistent with subsection (h) of this section.

(C) In connection with the judgment, on application of the state, the circuit court may enter any appropriate order to protect the interest of the state in property ordered forfeited; and

(5) Subsequent to the finding of liability and order of forfeiture, the following procedures apply:

(A) The attorney for the state shall give notice of pending forfeiture, in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure, to any owner or interest holder who has not previously been given notice;

(B) An owner of or interest holder in property that has been ordered forfeited and whose claim is not precluded may file a claim within thirty (30) days after initial notice of pending forfeiture or after notice under Rule 4 of the Arkansas Rules of Civil Procedure, whichever is earlier; and

(C) The circuit court may amend the in personam order of forfeiture if the circuit court determines that a claimant has established that he or she has an interest in the property and that the interest is exempt under subdivision (a)(4), subdivision (a)(6), or subdivision (a)(8) of this section.

(k) The circuit court shall order the forfeiture of any other property of a claimant or defendant up to the value of the claimant's or defendant's property found by the circuit court to be subject to forfeiture under subsection (a) of this section if any of the forfeitable property had remained under the control or custody of the claimant or defendant and:

(1) Cannot be located;

(2) Was transferred or conveyed to, sold to, or deposited with a third party;

(3) Is beyond the jurisdiction of the circuit court;

(4) Was substantially diminished in value while not in the actual physical custody of the seizing law enforcement agency;

(5) Was commingled with other property that cannot be divided without difficulty; or

(6) Is subject to any interest exempted from forfeiture under this subchapter.

(l)(1)(A) On the fifth day of each month the Treasurer of State shall transfer to the Department of Community Correction Fund Account twenty percent (20%) of any moneys deposited into the Special State Assets Forfeiture Fund during the previous month.

(B) However, in no event shall more than eight hundred thousand dollars ($800,000) be transferred during any one (1) fiscal year.

(2) Any moneys transferred to the Department of Community Correction Fund Account from the Special State Assets Forfeiture Fund in accordance with this subsection shall:

(A) Be used for the personal services and operating expenses of the drug courts and for no other purpose; and

(B) Not be transferred from the Department of Community Correction Fund Account.

(m)(1) There shall be no civil judgment under this subchapter and no property shall be forfeited unless the person from whom the property is seized is convicted of a felony offense that related to the property being seized and that permits the forfeiture of the property.

(2) The court may waive the conviction requirement under this subsection if the prosecuting attorney shows by clear and convincing evidence that, before a conviction, the person from whom the property was seized:

(A) Died;

(B) Was deported by the United States Government;

(C) Was granted immunity or reduced punishment in exchange for testifying or assisting a law enforcement agency or prosecution;

(D) Fled the jurisdiction or failed to appear on the underlying criminal charge;

(E) Failed to answer the complaint for civil asset forfeiture under this section as specified in the Arkansas Rules of Civil Procedure;

(F) Abandoned or disclaimed interest or ownership in the property seized; or

(G) Agreed in writing with the prosecuting attorney and other parties as to the disposition of the property.

History. Acts 1971, No. 590, Art. 5, § 5; 1977, No. 334, § 1; 1981, No. 78, § 3; 1981, No. 863, §§ 1, 2; 1983, No. 787, §§ 7, 8; 1985, No. 1074, § 1; A.S.A. 1947, § 82-2629; Acts 1989, No. 252, §§ 1, 2; 1989 (3rd Ex. Sess.), No. 87, §§ 1, 2, 4; 1991, No. 573, § 1; 1991, No. 1050, § 1; 1999, No. 1120, § 2; 2001, No. 1495, § 2; 2001, No. 1690, §§ 1, 2; 2003, No. 1447, § 1; 2005, No. 1994, § 310; 2005, No. 2245, § 1; 2007, No. 493, §§ 1-3; 2007, No. 827, § 65; 2007, No. 830, § 1; 2009, No. 699, § 1; 2011, No. 570, §§ 67, 68; 2017, No. 707, § 4; 2019, No. 315, §§ 164, 165; 2019, No. 476, § 1; 2021, No. 1023, § 2[3].

A.C.R.C. Notes. Acts 2021, No. 1023, § 1, provided: "Title. This act shall be known as and may be cited as the 'Arkansas Civil Asset Forfeiture Reform Act of 2021'."

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (h)(1)(A)(iii)*(a)*.

The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (f)(6) and (i)(3)(D)(i).

The 2019 amendment by No. 476 added (m).

The 2021 amendment rewrote (g)(4) and (g)(5)(B)(i); and, in (i)(2)(A)(v), added the language beginning with "including without limitation".

CASE NOTES

Analysis

Burden of Proof.
Close Proximity.
Forfeiture Proceeding.
Rules of Procedure.

Burden of Proof.

Appellant's argument that the State, in seeking forfeiture, failed to make a causal connection between money hidden in the rental vehicle and drug trafficking sales was rejected where the entirety of the

argument came from the testimony of appellant and his fiancée, and it appeared that the circuit court found the State's witnesses more credible. Appellant had been convicted of misdemeanor marijuana possession in connection with the incident. U.S. Currency v. State, 2017 Ark. App. 379, 526 S.W.3d 34 (2017).

Close Proximity.

Circuit court applied the presumption that if property was found in close proximity to a forfeitable controlled substance, then it was presumed to be forfeitable, and the burden of proof rested with the claimant of the property to rebut this presumption. The money found in the safe was located within four feet of the forfeitable property, controlled substances and drug paraphernalia, and appellant did not introduce anything to support his claim that the money was from the sale of legal items; the circuit court's findings were not clearly erroneous and the order of forfeiture was affirmed. Salim v. State, 2016 Ark. App. 556, 506 S.W.3d 863 (2016).

Forfeiture Proceeding.

Trial court erred by sua sponte granting a default judgment against an owner and in favor of the State in a civil-forfeiture case because the State had not applied for a default judgment; the trial court sua sponte moved the forfeiture case toward a default judgment and did so in the absence of a request by the prosecutor, and there was no service of a written notice at least three days prior to any hearing that would consider a default judgment. Byrd v. State, 2016 Ark. App. 489, 505 S.W.3d 699 (2016).

Rules of Procedure.

Rules of civil procedure, rather than rules of criminal procedure, apply to judicial-forfeiture proceedings. Nineteen Thousand Eight Hundred Ninety-four Dollars ($19,894.00) in American Currency v. State, 2016 Ark. App. 244, 491 S.W.3d 486 (2016).

Appellate court lacked jurisdiction to hear an appeal in a judicial-forfeiture proceeding because claimant's motion for reconsideration was not filed within 10 days from the date the judgment was entered, and thus claimant did not benefit from the extension outlined in subdivision (b)(1) of Ark. R. App. P. Civ. 4. Nineteen Thousand Eight Hundred Ninety-four Dollars ($19,894.00) in American Currency v. State, 2016 Ark. App. 244, 491 S.W.3d 486 (2016).

5-64-507. Conclusiveness of findings.

(a) Any final determination, finding, or conclusion of the Secretary of the Department of Health under this chapter is a final and conclusive decision of the matter involved.

(b) Any person aggrieved by the decision may obtain review of the decision in the circuit court of the county.

(c) If supported by substantial evidence, a finding of fact by the secretary is conclusive.

History. Acts 1971, No. 590, Art. 5, § 7; A.S.A. 1947, § 82-2631; Acts 2005, No. 1994, § 311; 2019, No. 910, § 4848.

Amendments. The 2019 amendment substituted "Secretary" for "Director" in (a).

5-64-508. Prevention and deterrence — Educational and research programs.

(a) The Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs the division may:

(1) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) Consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The division shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this chapter, the division may:

(1) Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) Make studies and undertake programs of research to:

(A) Develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter;

(B) Determine patterns of misuse and abuse of controlled substances and the social effects of misuse and abuse of controlled substances; and

(C) Improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and

(3) Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects that bear directly on misuse and abuse of controlled substances.

(c) The division may enter into contracts for educational and research activities without performance bonds.

(d)(1) The Secretary of the Department of Health may authorize a person engaged in research on the use and effects of a controlled substance to withhold the names and other identifying characteristics of individuals who are the subjects of the research.

(2) A person who obtains this authorization shall not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e)(1) The secretary may authorize the possession and distribution of a controlled substance by a person engaged in research.

(2) A person who obtains this authorization is exempt from state prosecution for possession and distribution of a controlled substance to the extent of the authorization.

History. Acts 1971, No. 590, Art. 5, § 8; 1979, No. 898, § 15; A.S.A. 1947, § 82-2632; Acts 2005, No. 1994, § 311; 2007, No. 827, § 66; 2013, No. 1107, § 2; 2017, No. 913, § 17; 2019, No. 910, §§ 4849, 4850.

Amendments. The 2017 amendment substituted "Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services" for "Division of Behavioral Health Services" in the introductory language of (a).

The 2019 amendment substituted "Secretary" for "Director" in (d)(1); and substituted "secretary" for "director" in (e)(1).

Subchapter 7 — Provisions Relating to the Uniform Controlled Substances Act

SECTION.
5-64-702. Promulgation of rules.
5-64-703. Authority to make inspections.
5-64-707. Admissibility of drug analysis — Cross-examination.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

5-64-702. Promulgation of rules.

(a) The Department of Health may promulgate rules necessary for the enforcement of this chapter.

(b) The rules described in subsection (a) of this section shall be promulgated pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1979, No. 898, § 17; A.S.A. 1947, § 82-2632.1; Acts 2005, No. 1994, § 312; 2019, No. 315, § 166.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the section heading, (a), and (b).

5-64-703. Authority to make inspections.

In carrying out the functions under this chapter, the Secretary of the Department of Health or his or her duly authorized agent may enter a

controlled premises and conduct an administrative inspection of the controlled premises.

History. Acts 1979, No. 898, § 18; A.S.A. 1947, § 82-2632.2; Acts 2005, No. 1994, § 312; 2019, No. 910, § 4851.

Amendments. The 2019 amendment substituted "Secretary" for "Director".

5-64-707. Admissibility of drug analysis — Cross-examination.

(a) In any criminal prosecution for an alleged violation of this chapter, a record or report of any relevant drug analysis made by the State Crime Laboratory shall be received as competent evidence as to a matter contained in the record or report in this section in any preliminary hearing when attested to by the Director of the State Crime Laboratory or his or her assistant or deputy.

(b)(1) Nothing in this section abrogates a defendant's right of cross-examination.

(2) If the defendant desires to cross-examine the director or the appropriate assistant or deputy, the defendant may compel the director or his or her appropriate assistant or deputy to attend court by the issuance of a proper subpoena.

(3) If the defendant compels the director or his or her appropriate assistant or deputy to attend court by the issuance of a proper subpoena:

(A) The record or report is only admissible through the director or the appropriate assistant or deputy; and

(B) The director or the appropriate assistant or deputy is subject to cross-examination by the defendant or his or her counsel.

History. Acts 1977, No. 356, § 1; A.S.A. 1947, § 82-2627.1; Acts 2005, No. 1994, § 313; 2019, No. 910, § 5735.

Amendments. The 2019 amendment deleted "Executive" preceding "Director" in (a); and deleted "executive" preceding "director" twice in (b)(2), in the introductory language of (b)(3), in (b)(3)(A), and in (b)(3)(B).

Subchapter 10 — Records of Transactions

SECTION.

5-64-1003. Inspection of records.
5-64-1004. Failure to maintain records — Penalty.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the

fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

5-64-1003. Inspection of records.

A record maintained pursuant to this subchapter is subject to inspection by any law enforcement officer of this state or any employee of the Department of Health designated by the Secretary of the Department of Health to conduct an examination, investigation, or inspection under this chapter relating to a controlled substance, counterfeit drug, or precursor chemical.

History. Acts 1989, No. 518, § 1; 2019, No. 910, § 4852.

Amendments. The 2019 amendment substituted "Secretary" for "Director".

5-64-1004. Failure to maintain records — Penalty.

Failure to maintain accurate records with proper identification from the purchaser under this subchapter is a Class A misdemeanor.

History. Acts 1989, No. 518, § 1; 2017, No. 333, § 3.

Amendments. The 2017 amendment substituted "under this subchapter is a Class A" for "is considered a Class A".

Subchapter 11 — Ephedrine and Other Nonprescription Drugs

5-64-1103. Sales limits.

CASE NOTES

Evidence Insufficient.

Insufficient evidence supported defendant's conviction for acquiring a prohibited amount of pseudoephedrine because the evidence did not show defendant acquired a prohibited amount of the substance in a single transaction. Coger v. State, 2017 Ark. App. 466, 529 S.W.3d 640 (2017).

Subchapter 13 — Anhydrous Ammonia

SECTION.

5-64-1301. Possession of anhydrous ammonia in unlawful container.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Effi-

ciencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

5-64-1301. Possession of anhydrous ammonia in unlawful container.

Any person who knowingly possesses anhydrous ammonia in a container that does not comply with the rules of the Boiler Inspection Division of the Division of Labor for the containment of anhydrous ammonia is guilty of a Class B felony.

History. Acts 1999, No. 909, § 1; 2019, No. 315, § 167; 2019, No. 910, § 5266.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations".

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor".

CHAPTER 65

DRIVING OR BOATING WHILE INTOXICATED

SUBCHAPTER.

1. General Provisions.
2. Chemical Analysis of Body Substances.
3. Underage Driving or Boating Under the Influence Law.
4. Administrative Driver's License Suspension.

Subchapter 1 — General Provisions

SECTION.

5-65-102. Definitions.
5-65-104. Seizure, suspension, and revocation of license — Temporary permits — Ignition interlock restricted license.
5-65-106. Impoundment of license plate.
5-65-109. Presentencing report.
5-65-111. Sentencing — Periods of incarceration — Exception.
5-65-115. Alcohol treatment or education program — Fee.
5-65-118. Additional penalties — Ignition interlock devices.
5-65-119. Distribution of fee.
5-65-121. Victim impact panel attendance — Fee.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Effi-

ciencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

5-65-102. Definitions.

As used in this chapter:

(1)(A) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through VI.

(B) The fact that any person charged with a violation of this chapter is or has been entitled to use that drug or controlled substance under the laws of this state does not constitute a defense against any charge of violating this chapter;

(2) "Ignition interlock device" means a device that connects a motor vehicle ignition system to a breath-alcohol analyzer and prevents a motor vehicle ignition from starting if a driver's blood alcohol level exceeds the calibration setting on the device;

(3) "Influence", with respect to an underage driver, means being controlled or affected by the ingestion of an alcoholic beverage or similar intoxicant, or any combination of an alcoholic beverage or similar intoxicant, to such a degree that the underage driver's reactions, motor skills, and judgment are altered or diminished, even to the slightest scale, and the underage driver, due to inexperience and lack of skill, constitutes a danger of physical injury or death to himself or herself or another person;

(4) "Intoxicated" means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination of alcohol, a controlled substance, or an intoxicant, to such a degree that the driver's reactions, motor skills, and judgment are substantially altered and the driver, therefore, constitutes a clear and substantial danger of physical injury or death to himself or herself or another person;

(5)(A) "Motorboat" means any vessel operated upon water and that is propelled by machinery, whether or not the machinery is the principal source of propulsion.

(B) "Motorboat" includes personal watercraft as defined in § 27-101-103(10);

(6)(A) "Motor vehicle" means a self-propelled, motorized vehicle capable of being operated on a roadway upon or in which a person or property is or may be transported or drawn upon a public or private road or public or private land.

(B) "Motor vehicle" includes without limitation:

(i) An all-terrain vehicle as defined under § 27-21-102; and

(ii) A vehicle designed to be used for agricultural purposes, such as a tractor.

(C) "Motor vehicle" does not include:

(i) A motor vehicle designed to assist a person with a physical disability with walking;

(ii) A motorized scooter or other vehicle designed to be used as a toy by a child;

(iii) A bicycle equipped with a small motor designed to assist the bicycle operator and that is not operated at a speed greater than twenty miles per hour (20 m.p.h.);

(iv) A riding lawnmower that is not operated on a public roadway;

(v) An electric personal assistive mobility device that is designed to not be capable of a speed of more than twenty miles per hour (20 m.p.h.); or

(vi) A device moved by human power or used exclusively upon stationary rails or tracks;

(7) "Serious physical injury" means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ;

(8) "Sworn report" means a signed and written statement of a certified law enforcement officer, under penalty of perjury, on a form provided by the Secretary of the Department of Finance and Administration;

(9) "Underage" means any person who is under twenty-one (21) years of age;

(10) "Victim impact statement" means a voluntary written or oral statement of a victim, or relative of a victim, who has sustained serious injury due to a violation of this chapter; and

(11) "Waters of this state" means any public waters within the territorial limits of the State of Arkansas.

History. Acts 1983, No. 549, § 2; A.S.A. 1947, § 75-2502; Acts 1987, No. 765, § 1; 1997, No. 1325, § 1; 2015, No. 299, § 6; 2019, No. 654, § 2; 2019, No. 910, § 3358.

A.C.R.C. Notes. Acts 2019, No. 654, § 1, provided: "Legislative intent.

"(a)(1) It is the intent of the General Assembly to provide for the safety of the public in instances in which serious physical injury occurs on the roadways and waterways of this state as a result of a person's operating a motor vehicle or motorboat while he or she is under the influence of alcohol or a controlled substance.

"(2) A motor vehicle in this instance would include an all-terrain vehicle or agricultural vehicle that is often not operated on the roadways of the state and instead operated in an off-road or agricultural field capacity.

"(b) It is not the intent of the General Assembly to provide a way for a law enforcement officer to enter onto private land when the law enforcement officer lacks probable cause or other lawful reasons to enter onto private land."

Acts 2019, No. 654, § 4, provided: "Title. Section 2 of this act shall be known as 'Jacob's Law'."

Amendments. The 2019 amendment by No. 654 inserted the definitions for "Motor vehicle" and "Serious physical injury".

The 2019 amendment by No. 910 substituted "Secretary" for "Director" in (6) [now (8)].

5-65-103. Driving or boating while intoxicated.

CASE NOTES

Analysis

Evidence Sufficient.
Mental State.
Probable Cause.

Evidence Sufficient.

Sufficient evidence supported defendant's conviction of driving while intoxicated, under subdivision (a)(1) of this section, where he manifestly failed to submit to a breathalyzer test, and the officer testified that defendant emitted a strong odor of alcohol and had staggered and appeared confused as to his location and where he actually lived. Lockhart v. State, 2017 Ark. 13, 508 S.W.3d 869 (2017) (decided under the pre-2015 version of this section).

Mental State.

Defendant failed to demonstrate reversible error in the trial court's denial of his motion to dismiss a driving while intoxicated (DWI) charge. The appellate court did not need to discuss whether the trial court erred in deciding that, in May 2013, DWI was a strict-liability offense because the trial court found in the alternative that defendant did have a culpable mental state, namely, that he acted recklessly. Tackett v. State, 2017 Ark. App. 271, 523 S.W.3d 360 (2017).

Although the circuit court in a bench trial incorrectly held that the applicable culpable mental state was strict liability in a DWI case that did not involve alcohol, defendant's conviction was affirmed where the circuit court made an alternative finding under the correct standard that the State had submitted proof sufficient to satisfy reckless conduct under §§ 5-2-203 and 5-2-202; the testimony of the officer, the pharmacist expert, and the defendant provided sufficient evidence to support a finding that defendant acted recklessly in taking prescribed barbiturates (for her migraine) and then operating a motor vehicle. Cordero v. State, 2019 Ark. App. 484, 588 S.W.3d 369 (2019).

Reversal of defendant's DWI conviction and remand for the circuit court to consider the evidence under the correct standard was appropriate because the circuit court incorrectly held that the applicable culpable mental state for non-alcohol-related offenses was strict liability and the court also did not make an alternative finding under the correct standard. Therefore, the appellate court could not conclude that the circuit court would have concluded that defendant acted at least recklessly under the evidence. Rowton v. State, 2020 Ark. App. 174, 598 S.W.3d 522 (2020).

Probable Cause.

DWI defendant's motion to suppress was properly denied because probable cause existed for the traffic stop; although the video did not clearly show defendant's car crossing the center line, the police officer testified that defendant's vehicle weaved and crossed the center line a number of times. The officer's testimony, combined with the video account, established probable cause that defendant had violated § 27-51-301(a). Lockhart v. State, 2017 Ark. 13, 508 S.W.3d 869 (2017).

Cited: Papageorge v. Tyson Shared Servs., 2019 Ark. App. 603, 590 S.W.3d 800 (2019).

5-65-104. Seizure, suspension, and revocation of license — Temporary permits — Ignition interlock restricted license.

(a)(1) At the time of arrest for operating or being in actual physical control of a motorboat on the waters of this state or a motor vehicle while intoxicated or while there was an alcohol concentration of eight hundredths (0.08) or more in the person's breath or blood, as provided in § 5-65-103, the arrested person shall immediately surrender his or her driver's license, driver's permit, or other evidence of driving

privilege to the arresting law enforcement officer as provided in § 5-65-402.

(2) The Office of Driver Services or its designated official shall suspend or revoke the driving privilege of an arrested person or shall suspend any nonresident driving privilege of an arrested person, as provided in § 5-65-402. The suspension or revocation shall be based on the number of previous offenses as follows:

(A) Suspension for:

(i)*(a)* Six (6) months for the first offense of operating or being in actual physical control of a motorboat on the waters of this state or a motor vehicle while intoxicated or while there was an alcohol concentration of at least eight hundredths (0.08) by weight of alcohol in the person's blood or breath, § 5-65-103.

(b) If the Office of Driver Services allows the issuance of an ignition interlock restricted license under § 5-65-118, the ignition interlock restricted license shall be available immediately.

(c) The restricted driving permit under § 5-65-120 is not allowed for a suspension under this subdivision (a)(2)(A)(i); and

(ii)*(a)* Suspension for six (6) months for the first offense of operating or being in actual physical control of a motorboat on the waters of this state or a motor vehicle while intoxicated by the ingestion of or by the use of a controlled substance.

(b) The ignition interlock restricted license provision of § 5-65-118 does not apply to a suspension under subdivision (a)(2)(A)(ii)*(a)* of this section;

(B)(i) Suspension for twenty-four (24) months for a second offense of operating or being in actual physical control of a motorboat on the waters of this state or a motor vehicle while intoxicated or while there was an alcohol concentration of eight hundredths (0.08) or more by weight of alcohol in the person's blood or breath, § 5-65-103, within five (5) years of the first offense.

(ii) However, if the office allows the issuance of an ignition interlock restricted license under § 5-65-118, the restricted license is available immediately.

(iii) The ignition interlock restricted license provision of § 5-65-118 does not apply to the suspension under subdivisions (a)(2)(B)(i) and (ii) of this section if the person is arrested for an offense of operating or being in actual physical control of a motor vehicle or motorboat while intoxicated by the ingestion of or by the use of a controlled substance;

(C)(i) Suspension for thirty (30) months for the third offense of operating or being in actual physical control of a motorboat on the waters of this state or a motor vehicle while intoxicated or while there was an alcohol concentration of eight hundredths (0.08) or more by weight of alcohol in the person's blood or breath, § 5-65-103, within five (5) years of the first offense.

(ii) However, if the office allows the issuance of an ignition interlock restricted license under § 5-65-118, the restricted license is available immediately.

(iii) The ignition interlock restricted license provision of § 5-65-118 does not apply to the suspension under subdivisions (a)(2)(C)(i) and (ii) if the person is arrested for an offense of operating or being in actual physical control of a motorboat on the waters of this state or a motor vehicle while intoxicated by the ingestion of or by the use of a controlled substance; and

(D)(i) Revocation for four (4) years, during which no restricted permits may be issued, for the fourth or subsequent offense of operating or being in actual physical control of a motor vehicle or motorboat while intoxicated or while there was an alcohol concentration of eight hundredths (0.08) or more by weight of alcohol in the person's blood or breath, § 5-65-103, within five (5) years of the first offense.

(ii) A person whose driver's license is revoked under this subdivision (a)(2)(D) is required to install a functioning ignition interlock device on his or her motor vehicle under § 5-65-118(a)(1)(B) if the person regains his or her driver's license.

(3) If a person is a resident who is convicted of driving without a license or permit to operate a motor vehicle or motorboat and the underlying basis for the suspension, revocation, or restriction of the license or permit was for a violation of § 5-65-103, in addition to any other penalties provided for under law, the court may restrict the offender to an ignition interlock restricted license for a period of one (1) year prior to the reinstatement or reissuance of a license or permit after the person would otherwise be eligible for reinstatement or reissuance of the person's license or permit.

(4) In order to determine the number of previous offenses to consider when suspending or revoking the arrested person's driving privilege, the office shall consider as a previous offense any of the following that occurred within the five (5) years immediately before the current offense:

(A) A conviction for an offense of operating or being in actual physical control of a motorboat on the waters of this state or a motor vehicle while intoxicated or while there was an alcohol concentration of eight hundredths (0.08) or more in the person's breath or blood, including a violation of § 5-10-105(a)(1)(A) or § 5-10-105(a)(1)(B), that occurred:

(i) In Arkansas; or

(ii) In another state; or

(B) A suspension or revocation of driving privilege for an arrest for operating or being in actual physical control of a motorboat on the waters of this state or a motor vehicle while intoxicated or while there was an alcohol concentration of eight hundredths (0.08) or more in the person's breath or blood under § 5-65-103 when the person was not subsequently acquitted of the criminal charges.

(b)(1)(A) A person whose driving privilege is suspended or revoked under this section is required to complete an alcohol education program or an alcohol treatment program as approved by the

Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services unless the charges are dismissed or the person is acquitted of the charges upon which the suspension or revocation is based.

(B) If during the period of suspension or revocation under subdivision (b)(1)(A) of this section the person commits an additional violation of § 5-65-103, he or she is also required to complete an approved alcohol education program or alcohol treatment program for each additional violation, unless:

(i) The additional charges are dismissed; or

(ii) He or she is acquitted of the additional charges.

(2) A person whose driving privilege is suspended or revoked under this section shall furnish proof of:

(A) Attendance at and completion of the alcohol education program or the alcohol treatment program required under subdivision (b)(1) of this section before reinstatement of his or her suspended or revoked driving privilege; or

(B) Dismissal or acquittal of the charge on which the suspension or revocation is based.

(3) Even if a person has filed a de novo petition for review under former subsection (c) of this section, the person is entitled to reinstatement of driving privileges upon complying with this subsection and is not required to postpone reinstatement until the disposition of the de novo review in circuit court has occurred.

History. Acts 1983, No. 549, § 13; 1985, No. 113, § 1; 1985, No. 1064, § 1; A.S.A. 1947, § 75-2511; Acts 1989, No. 368, § 1; 1989, No. 621, § 1; 1993, No. 736, § 1; 1995, No. 802, § 1; 1997, No. 830, § 1; 1997, No. 1325, § 2; 1999, No. 1077, § 9; 1999, No. 1468, § 1; 1999, No. 1508, § 7; 2001, No. 561, §§ 3-5; No. 1501, § 1; 2003, No. 541, § 1; 2003, No. 1036, § 1; 2003, No. 1462, § 1; 2003, No. 1779, § 1; 2005, No. 1234, § 3; 2005, No. 1768, § 1; 2007, No. 712, § 1; 2007, No. 827, § 75; 2007, No. 1196, § 1; 2009, No. 359, §§ 1-3; 2009, No. 650, § 2; 2009, No. 922, § 1; 2009, No. 1293, § 1; 2013, No. 479, §§ 1, 2; 2015, No. 299, § 6; 2017, No. 913, § 18; 2017, No. 1094, § 1.

Amendments. The 2017 amendment by No. 913 substituted "Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services" for "Division of Behavioral Health Services" in (b)(1)(A).

The 2017 amendment by No. 1094 redesignated former (a)(2)(D) as (a)(2)(D)(i); and added (a)(2)(D)(ii).

5-65-105. Operation of motor vehicle during period of license suspension or revocation.

CASE NOTES

Evidence.

Circuit court properly denied defendant's motion to suppress evidence obtained during a traffic stop where the officer had verified defendant's license was suspended one day prior to the stop at issue, and thus, the officer had probable cause to believe that defendant was driving on a suspended license at the time of the stop at issue. Prickett v. State, 2016 Ark. App. 551, 506 S.W.3d 870 (2016).

Circuit court's denial of appellant's motion to suppress evidence seized during a traffic stop was affirmed where the deputy testified that he knew from a prior traffic stop that appellant's license had been sus-

pended, and thus, pursuant to Ark. R. Crim. P. 4.1(a)(iii), he had reasonable cause to believe that appellant was violating this section. Williams v. State, 2017 Ark. App. 291, 524 S.W.3d 13 (2017).

5-65-106. Impoundment of license plate.

(a) When a law enforcement officer arrests a person for operating a motor vehicle while that person's driving privilege has been suspended or revoked under the laws of any state due to the person's having previously been found guilty or having pleaded guilty or nolo contendere to violating § 5-65-103 and if the motor vehicle operated by the person is owned in whole or part by the person, the motor vehicle license plate shall be impounded by the law enforcement officer for no less than ninety (90) days.

(b) If the court determines it is in the best interest of the dependents of the person, the court shall instruct the Secretary of the Department of Finance and Administration to issue a temporary substitute motor vehicle license plate for the motor vehicle, and the temporary substitute motor vehicle license plate shall indicate that the original motor vehicle license plate has been impounded.

History. Acts 1983, No. 549, § 15; A.S.A. 1947, § 75-2513; Acts 2015, No. 299, § 6; 2019, No. 910, § 3359.

Amendments. The 2019 amendment substituted "Secretary" for "Director" in (b).

5-65-109. Presentencing report.

(a) The court shall immediately request and the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services or its designee shall provide a presentence screening and assessment report of the defendant who pleads guilty or nolo contendere or is found guilty of violating § 5-65-103 or § 5-65-303.

(b)(1) The presentence screening and assessment report shall be provided within thirty (30) days of the request.

(2)(A) If the defendant's sentencing is delayed by the defendant after he or she pleads guilty or nolo contendere, or if he or she is found guilty, the clerk of the court shall notify the defendant by first-class mail sent to the defendant's last known address that he or she has fifteen (15) days to appear and show cause for failing to appear for sentencing.

(B) The court may proceed with sentencing even in the absence of the defendant after the expiration of the fifteen (15) days under subdivision (b)(2)(A) of this section.

(c) The presentence screening and assessment report shall include without limitation:

(1) The defendant's driving record;

(2) An alcohol problem assessment; and

(3) A victim impact statement, if applicable.

History. Acts 1983, No. 549, § 6; A.S.A. 1947, § 75-2506; Acts 1991, No. 899, § 1; 1999, No. 1077, § 10; 2003, No. 129, § 1; 2007, No. 251, § 1; 2007, No. 827, § 77; 2013, No. 1107, § 3; 2015, No. 299, § 6; 2017, No. 913, § 19; 2019, No. 321, § 1.

Amendments. The 2017 amendment substituted "Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services" for "Division of Behavioral Health Services" in (a).

The 2019 amendment deleted "and the court shall not pronounce sentence until the court receives the presentence screening and assessment report" following "request" in (b)(1).

CASE NOTES

Preservation for Review.

Waiting to raise the lack of a presentence report for the first time in a posttrial motion does not preserve the issue for appellate review. Lockhart v. State, 2017 Ark. 13, 508 S.W.3d 869 (2017).

5-65-110. Record of violations and court actions — Abstract.

CASE NOTES

Cited: Clay v. State, 2019 Ark. App. 356, 584 S.W.3d 270 (2019).

5-65-111. Sentencing — Periods of incarceration — Exception.

(a)(1) A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103 for a first offense upon conviction is guilty of an unclassified misdemeanor and may be imprisoned for not less than:

(A) Twenty-four (24) hours but no more than one (1) year; or

(B) Seven (7) days but no more than one (1) year if a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense.

(2) The court may order public service instead of imprisonment and, if the court orders public service, the court shall include the reasons for the order of public service instead of imprisonment in the court's written order or judgment.

(b)(1) A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103 for a second offense occurring within ten (10) years of the first offense upon conviction is guilty of an unclassified misdemeanor and may be imprisoned for not less than:

(A) Seven (7) days but no more than one (1) year; or

(B) Thirty (30) days but no more than one (1) year if a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense.

(2) The court may order public service instead of imprisonment in the following manner, and if the court orders public service, the court shall include the reasons for the order of public service instead of imprisonment in its written order or judgment:

(A) Not less than thirty (30) days; or

(B) Not less than sixty (60) days if a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense.

(c)(1) A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103 for a third offense occurring within ten (10) years of the first offense upon conviction is guilty of an unclassified misdemeanor and may be imprisoned for not less than:

(A) Ninety (90) days but no more than one (1) year; or

(B) One hundred twenty (120) days but no more than one (1) year if a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense.

(2) The court may order public service instead of imprisonment in the following manner, and if the court orders public service, the court shall include the reasons for the order of public service instead of imprisonment in its written order or judgment:

(A) Not less than ninety (90) days; or

(B) Not less than one hundred twenty (120) days if a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense.

(d) A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103 for a fourth offense occurring within ten (10) years of the first offense upon conviction is guilty of an unclassified felony and may be imprisoned for not less than:

(1) One (1) year but no more than six (6) years; or

(2) Two (2) years but no more than six (6) years if a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense.

(e) A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103 for a fifth or subsequent offense occurring within ten (10) years of the first offense upon conviction is guilty of an unclassified felony and may be imprisoned for no fewer than:

(1) Two (2) years but no more than ten (10) years; or

(2) Three (3) years but no more than ten (10) years if a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense.

(f) A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103 for a sixth or subsequent offense occurring within twenty (20) years of the first offense upon conviction is guilty of a Class B felony.

(g) A certified judgment of conviction of driving or boating while intoxicated or other equivalent offense from another state or jurisdiction may be used to enhance the penalties as a previous offense under this section.

(h) For any arrest or offense occurring before July 28, 2021, that has not reached a final disposition as to judgment in court, the offense shall be decided under the law in effect at the time the offense occurred, and the defendant is subject to the penalty provisions in effect at that time and not under the provisions of this section.

(i) It is an affirmative defense to prosecution under subdivisions (a)(1)(B), (b)(1)(B), (c)(1)(B), (d)(2), and (e)(2) of this section that the person operating or in actual physical control of the motor vehicle or motorboat was not more than two (2) years older than the passenger.

(j)(1) A prior conviction for § 5-10-105(a)(1)(A) or § 5-10-105(a)(1)(B) is considered a previous offense for purposes of this section.

(2) A prior conviction under former § 5-76-102 is considered a previous offense for purposes of this section only if the current offense is operating a motorboat on the waters of this state while intoxicated.

History. Acts 1983, No. 549, § 4; A.S.A. 1947, § 75-2504; Acts 1997, No. 1236, § 1; 1999, No. 1077, § 11; 2001, No. 1206, § 1; 2003, No. 1461, §§ 1, 2; 2009, No. 650, § 3; 2013, No. 1268, § 1; 2015, No. 299, § 6; 2017, No. 333, § 4; 2017, No. 1032, § 1; 2021, No. 274, § 1.

Amendments. The 2017 amendment by No. 333 redesignated former (a)(1)(A) as the present introductory language of (a)(1) and (a)(1)(A); deleted former (a)(1)(B); rewrote former (a)(2)(A) and redesignated it as present (a)(1)(B); and redesignated former (a)(2)(B) as (a)(2).

The 2017 amendment by No. 1032 deleted former (d)(2), (e)(2) and (f)(2); and redesignated former (d)(1), (e)(1) and (f)(1) as present (d), (e), and (f).

The 2021 amendment substituted "ten (10) years" for "five (5) years" in the introductory language of (b)(1), (c)(1), (d), and (e); substituted "twenty (20) years" for "ten (10) years" in (f); substituted "the effective date of this act" for "July 22, 2015, but" in (h); and made stylistic changes.

CASE NOTES

Prior Convictions.

Overruling defendant's objection to certified copies of the docket sheets showing three prior misdemeanor DWI convictions under Ark. R. Evid. 803(22) was an abuse of discretion as the convictions were not punishable by more than one year in prison. Clay v. State, 2019 Ark. App. 356, 584 S.W.3d 270 (2019).

Circuit court's admission of certified docket sheets showing three prior misdemeanor DWI convictions was not an abuse of discretion under Ark. R. Evid. 803(8) as the evidence fell squarely within the public-records exception, and was admissible to prove an element of a subsequently charged crime, i.e., that defendant had been convicted of seven DWIs, not to prove that he actually committed the underlying misdemeanors charged. Thus, any conflict between Ark. R. Evid. 803(22) and 803(8) was resolved. Clay v. State, 2019 Ark. App. 356, 584 S.W.3d 270 (2019).

Because defendant, an habitual offender, was sentenced to less than the maximum sentence under either his argued fifth-DWI scenario or for his eighth DWI, defendant had not demonstrated prejudice. Clay v. State, 2019 Ark. App. 356, 584 S.W.3d 270 (2019).

5-65-115. Alcohol treatment or education program — Fee.

(a)(1) A person whose driving privileges are suspended or revoked for violating § 5-65-103, § 5-65-303, § 5-65-310, or § 3-3-203 is required to complete an alcohol education program provided by a contractor with the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services or an alcoholism treatment program licensed by the division.

(2)(A) The alcohol education program may collect a program fee of up to one hundred twenty-five dollars ($125) per enrollee to offset program costs.

(B)(i) A person ordered to complete an alcohol education program under this section may be required to pay, in addition to the costs collected for education or treatment, a fee of up to twenty-five dollars

($25.00) to offset the additional costs associated with reporting requirements under this subchapter.

(ii) The alcohol education program shall report monthly to the division all revenue derived from this fee.

(b)(1) A person whose driving privilege is suspended or revoked for violating § 5-65-103 shall:

(A) Both:

(i) Furnish proof of attendance at and completion of the alcoholism treatment program or alcohol education program required under § 5-65-104(b)(1) before reinstatement of his or her suspended or revoked driving privilege; and

(ii) Pay any fee for reinstatement required under § 5-65-119 or § 5-65-304; or

(B) Furnish proof of dismissal or acquittal of the charge on which the suspension or revocation is based.

(2) An application for reinstatement shall be made to the Office of Driver Services.

(c) Even if a person has filed a de novo petition for review under § 5-65-402, he or she is entitled to reinstatement of driving privileges upon complying with this section and is not required to postpone reinstatement until the disposition of the de novo review in circuit court has occurred.

(d)(1) A person whose driving privilege has been suspended or revoked under this chapter may enroll in an alcohol education program prior to disposition of the case by the circuit court or district court.

(2) However, the person is not entitled to a refund of a fee paid if the charges are dismissed or if the person is acquitted.

(e) An alcohol education program or alcoholism treatment program operating under this chapter shall remit the fees imposed under this section to the division.

History. Acts 1983, No. 549, § 7; 1985, No. 108, § 1; A.S.A. 1947, § 75-2507; Acts 1991, No. 486, § 1; 1995, No. 172, § 1; 1995, No. 263, § 1; 1995, No. 1032, § 1; 1995, No. 1256, § 20; 1995 (1st Ex. Sess.), No. 13, § 4; 1999, No. 1077, § 13; 2003, No. 1462, § 2; 2005, No. 1768, § 3; 2007, No. 251, § 2; 2007, No. 827, § 78; 2009, No. 748, § 28; 2013, No. 1107, §§ 4, 5; 2015, No. 299, § 6; 2017, No. 913, § 20.

Amendments. The 2017 amendment substituted "Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services" for "Division of Behavioral Health Services" in (a)(1).

5-65-118. Additional penalties — Ignition interlock devices.

(a)(1)(A)(i) Except as provided under subsection (g) of this section, the Office of Driver Services shall place a restriction on a person who has violated § 5-65-103 for a first or second offense that requires the person's motor vehicle to be equipped with a functioning ignition interlock device in addition to any other penalty authorized by this chapter.

(ii) The restriction shall continue until the person has completed his or her mandatory period for using an ignition interlock device.

(iii) The restriction under subdivision (a)(1)(A)(i) of this section does not apply to a person who is arrested for violating § 5-65-103 for a first or second offense if the person was intoxicated by the ingestion of or by the use of a controlled substance.

(B)(i) The office shall place a restriction on a person who has violated § 5-65-103 for a third or subsequent offense that requires the person's motor vehicle to be equipped with a functioning ignition interlock device in addition to any other penalty authorized by this chapter.

(ii) The restriction shall continue until the person has completed his or her mandatory period for using an ignition interlock device.

(iii) The restriction under subdivision (a)(1)(B)(i) of this section does not apply to a person who is arrested for violating § 5-65-103 for a third or subsequent offense if the person was intoxicated by the ingestion of or by the use of a controlled substance.

(2) The office may issue an ignition interlock restricted license to the person only after the person has verified installation of a functioning ignition interlock device to the office in any motor vehicle the person intends to operate, except for an exemption allowed under § 5-65-123(f).

(3) The office shall establish:

(A) A specific calibration setting no lower than two hundredths of one percent (0.02%) nor more than five hundredths of one percent (0.05%) of alcohol in the person's blood at which the ignition interlock device will prevent the motor vehicle's being started; and

(B) The period of time that the person is subject to the restriction.

(b) The office shall do the following after restricting a person's driving by requiring the use of an ignition interlock device:

(1)(A) State on the record the requirement for and the period of use of the ignition interlock device.

(B) However, if the office restricts the person to using an ignition interlock device in conjunction with the issuance of an ignition interlock restricted license under § 5-65-104, the time the person is required to use the ignition interlock device shall be until the original suspension imposed under § 5-65-104 has been completed;

(2) Ensure that the records of the office reflect that the person may not operate a motor vehicle that is not equipped with an ignition interlock device;

(3) Attach or imprint a notation on the driver's license of a person restricted under this section stating that the person may operate a motor vehicle only if it is equipped with an ignition interlock device;

(4) Require that the person restricted under this section show proof of installation of a certified ignition interlock device prior to the issuance of an ignition interlock restricted license by the office under § 5-65-104;

(5)(A) Require both proof of the installation of an ignition interlock device and periodic reporting by the person for verification of the proper operation of the ignition interlock device.

(B) Proof of the installation of the ignition interlock device for the entire period required by law shall be provided before the person's driving privileges are reinstated;

(6) Require the person to have the ignition interlock device serviced and monitored at least every sixty-seven (67) days for proper use and accuracy by an entity approved by the Department of Health; and

(7)(A) Require the person to pay the reasonable cost of leasing or buying and monitoring and maintaining the ignition interlock device.

(B) The office may establish a payment schedule for the reasonable cost of leasing or buying and monitoring and maintaining the ignition interlock device.

(c) If the person whose driving privilege is restricted under this section cannot provide proof of installation of a functioning ignition interlock device to the office under subsection (a) of this section, the office shall not issue an ignition interlock restricted license as authorized under this section.

(d) The office shall revoke the ignition interlock restricted license and reinstate a driving privilege suspension for the term of the original driving privilege suspension if it finds that a person has violated § 5-65-123.

(e) A person who has had his or her driving privilege suspended or revoked under § 5-65-104 who would otherwise be eligible to obtain an ignition interlock restricted license may petition the office for a hearing, and the office may issue an ignition interlock restricted license as authorized under §§ 5-65-104 and 5-65-205.

(f)(1) The department shall:

(A) Certify the ignition interlock devices for use in this state;

(B) Approve the entities that install and monitor the ignition interlock devices; and

(C) Adopt rules for the certification of the ignition interlock devices and ignition interlock device installation.

(2) The rules shall require an ignition interlock device, at a minimum, to:

(A) Not impede the safe operation of the motor vehicle;

(B) Minimize the opportunities to be bypassed;

(C) Work accurately and reliably in an unsupervised environment;

(D) Properly and accurately measure the person's blood alcohol levels;

(E) Minimize the inconvenience to a sober user; and

(F) Be manufactured by an entity that is responsible for installation, user training, and servicing and maintenance of the ignition interlock device, and that is capable of providing monitoring reports to the office.

(3) The department shall develop a warning label to be affixed to any ignition interlock device used in the state to warn any person of the possible penalties for tampering with or attempting to circumvent the ignition interlock device.

(4) The department shall:

(A) Publish and update a list of certified ignition interlock device manufacturers and approved ignition interlock device installers; and

(B) Periodically provide the list required by subdivision (f)(4)(A) of this section to the office.

(g)(1) A person who has violated § 5-65-103 for a first offense that requires the person's motor vehicle to be equipped with a functioning ignition interlock device under this section may petition the court with jurisdiction for a waiver of the requirement to install a functioning interlock device under this section.

(2) The court with jurisdiction may waive the requirement to install a functioning ignition interlock device under this section under the following conditions:

(A) The person is required to operate an employer's motor vehicle in the course and scope of employment and the business entity that owns the vehicle is not owned or controlled by the person;

(B) The person is certified by a medical doctor as being unable to provide a deep lung breath sample for analysis by an ignition interlock device; or

(C) A state-certified ignition interlock device provider is not available within one hundred (100) miles of the person's residence.

(3) Upon finding that a condition under subdivision (g)(2) of this section is present, the court with jurisdiction shall enter an order to that effect and transmit the order to the office for compliance.

History. Acts 1993, No. 298, § 1; 1995, No. 1296, § 8; 1999, No. 1468, § 2; 2001, No. 1206, § 2; 2001, No. 1501, § 2; 2005, No. 1234, § 2; 2007, No. 827, § 79; 2014, No. 277, § 13; 2015, No. 299, § 6; 2015, No. 1221, § 1; 2017, No. 1094, §§ 2, 3.

Amendments. The 2017 amendment substituted "Except as provided under subsection (g) of this section, the" for "The" in (a)(1)(A)(i); and added (g).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Statutes Establishing "24/7" Sobriety Programs, Requiring Persons Accused or Convicted of DUI or Similar Offenses to Submit to Regular Breath Testing as Condition of Pretrial Release, Parole, or Suspended Sentence. 28 A.L.R.7th Art. 8 (2018).

5-65-119. Distribution of fee.

(a)(1) The Office of Driver Services shall charge a fee to be calculated under subsection (b) of this section for reinstating a driving privilege suspended or revoked because of an arrest for violating § 5-65-103 or § 5-65-205.

(2) The fee under subdivision (a)(1) of this section shall be distributed as follows:

(A) Seven percent (7%) of the revenues derived from this fee shall be deposited into the State Treasury as special revenues and credited to the Public Health Fund to be used exclusively for the Office of Alcohol Testing of the Department of Health;

(B) Thirty-three percent (33%) of the revenues derived from this fee shall be deposited as special revenues into the State Treasury into the Constitutional Officers Fund and the State Central Services Fund as a direct revenue to be used by the Office of Driver Services for use in supporting the administrative driver's licensing revocation and sanctions programs provided for in this subchapter;

(C) Ten percent (10%) of the revenues derived from this fee shall be deposited into the State Treasury, and the Treasurer of State shall credit them as general revenues to the various funds in the respective amounts to each and to be used for the purposes as provided in the Revenue Stabilization Law, § 19-5-101 et seq.; and

(D) Fifty percent (50%) of the revenues derived from this fee shall be deposited into the State Treasury as special revenues to the credit of the Division of Arkansas State Police Fund.

(3) Upon notice to the taxpayer of certification of the intent to intercept the taxpayer's state income tax refund under § 26-36-301 et seq., the outstanding fees assessed under this section that are owed by a taxpayer shall be setoff against the taxpayer's state income tax refund.

(b)(1)(A) The fee under subsection (a) of this section shall be calculated by multiplying one hundred fifty dollars ($150) by each separate occurrence of an offense resulting in an administrative suspension order under § 5-65-103 or § 5-65-205 unless the administrative suspension order has been removed because:

(i) The person has been found not guilty of the offense by a circuit court or district court; or

(ii) A de novo review of the administrative suspension order by the Office of Driver Services results in the removal.

(B) The fee under subsection (a) of this section is supplemental to and in addition to any fee imposed under § 5-65-304, § 5-65-310, § 27-16-508, or § 27-16-808.

(2) As used in this subsection, "occurrence" means each separate calendar date when an offense or offenses take place.

History. Acts 1995, No. 802, § 2; 2001, No. 561, § 6; 2003, No. 1001, § 1; 2005, No. 1992, § 1; 2013, No. 361, § 3; 2015, No. 299, § 6; 2019, No. 803, § 1.

Amendments. The 2019 amendment added (a)(3).

5-65-121. Victim impact panel attendance — Fee.

(a)(1) A person whose driving privileges are suspended or revoked for violating § 5-65-103, § 5-65-205, § 5-65-303, § 5-65-310, or § 3-3-203 shall attend a victim impact panel provided by an organization approved by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services.

(2) The organization approved by the division to provide the victim impact panel shall be a drug and alcohol safety education program provider contracted with the division.

(b)(1) The organization approved by the division may collect a program fee of forty dollars ($40.00) per enrollee to offset program costs to be remitted to the organization.

(2) However, if the enrollee is in the custody of the Department of Corrections, the organization may collect a program fee not to exceed ten dollars ($10.00) per enrollee to offset program costs to be remitted to the organization.

(3) The organization approved by the division shall provide proof of attendance and completion to the person required to attend the victim impact panel upon completion of the victim impact panel.

History. Acts 2009, No. 946, § 1; 2013, No. 1107, § 6; 2015, No. 299, § 6; 2017, No. 913, § 21; 2021, No. 500, § 1.

Amendments. The 2017 amendment substituted "Division of Aging, Adult, and Behavioral Health Services" for "Division of Behavioral Health Services" in (a)(1).

The 2021 amendment substituted "provided" for "sponsored" in (a)(1); rewrote (a)(2); substituted "forty dollars ($40.00)" for "ten dollars ($10.000)" in (b)(1); and inserted (b)(2) and redesignated former (b)(2) as (b)(3).

Subchapter 2 — Chemical Analysis of Body Substances

SECTION.
5-65-201. Rules.
5-65-202. Implied consent.
5-65-204. Validity — Approved methods.
5-65-205. Refusal to submit to a chemical test.
5-65-208. Motor vehicle and motorboat accidents — Testing required.

5-65-201. Rules.

The Department of Health may promulgate rules reasonably necessary to carry out the purposes of this subchapter.

History. Acts 1969, No. 106, § 2; A.S.A. 1947, § 75-1046; Acts 2019, No. 315, § 168.

Amendments. The 2019 amendment deleted "and regulations" following "Rules" in the section heading; and deleted "and regulations" following "rules" in the text.

5-65-202. Implied consent.

(a) A person who operates a motorboat on the waters of this state or a motor vehicle or is in actual physical control of a motorboat on the waters of this state or a motor vehicle is deemed to have given consent, subject to § 5-65-203, to one (1) or more chemical tests of his or her breath, saliva, or urine for the purpose of determining the alcohol concentration or controlled substance content of his or her breath or blood if:

(1) The person is arrested for any offense arising out of an act alleged to have been committed while the person was driving or boating while intoxicated or driving or boating while there was an alcohol concentration of eight hundredths (0.08) or more in the person's breath or blood;

(2) The person is involved in an accident while operating or in actual physical control of a motorboat on the waters of this state or a motor vehicle; or

(3) At the time the person is arrested for driving or boating while intoxicated, the law enforcement officer has reasonable cause to believe that the person, while operating or in actual physical control of a motorboat on the waters of this state or a motor vehicle, is intoxicated or has an alcohol concentration of eight hundredths (0.08) or more in the person's breath or blood.

(b) A person who is dead, unconscious, or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn the consent provided by subsection (a) of this section, and one (1) or more chemical tests may be administered subject to § 5-65-203.

(c) Absent exigent circumstances, a test of a person's blood under this section to determine the person's alcohol concentration, controlled substance content, or other intoxicating substance content in his or her blood requires a warrant based on probable cause that the person was operating or in actual physical control of a motorboat on the waters of this state or a motor vehicle while intoxicated or the person's express consent to the test.

History. Acts 1969, No. 106, § 1; 1971, No. 55, § 1; 1971, No. 306, § 1; 1973, No. 127, § 1; 1975, No. 660, § 1; 1983, No. 549, § 11; A.S.A. 1947, § 75-1045; Acts 1987, No. 75, § 1; 1993, No. 132, § 1; 2001, No. 561, § 7; 2009, No. 431, § 1; 2013, No. 361, § 4; 2015, No. 299, § 7; 2015, No. 1155, § 11; 2017, No. 1031, § 1; 2021, No. 147, § 1.

Amendments. The 2017 amendment deleted "blood" preceding "breath, saliva" in (a); and added (c).

The 2021 amendment, in (c), added "Absent exigent circumstances" and "or the person's express consent to the test".

CASE NOTES

Analysis

Constitutionality.
Submission to Testing.

Constitutionality.

Defendant's constitutional challenge to subdivision (a)(3) of this section and § 5-65-205(a)(2) was rejected where the statutes did not clearly and unmistakably conflict with the holding of Missouri v. McNeely, 569 U.S. 141, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013). Burr v. State, 2016 Ark. App. 182, 487 S.W.3d 395 (2016).

In view of defendant's arrest on reasonable cause, the reduced expectation of privacy as a motorist and an arrestee, the minimal intrusiveness of a breath test, and the compelling interest in combating drunk driving, the implied-consent statute did not clearly and unmistakably violate the Fourth Amendment. Burr v. State, 2016 Ark. App. 182, 487 S.W.3d 395 (2016).

Circuit court erred in finding that a blood draw did not implicate the Fourth Amendment where defendant's refusal to submit to a blood test pursuant to the pre-2017 version of this section would have resulted in the imposition of criminal penalties, and thus, the version of this section in effect before the 2017 amendment was unconstitutional as applied to defendant. Dortch v. State, 2018 Ark. 135,

544 S.W.3d 518 (2018) (decision under prior law).

Submission to Testing.

Circuit court erred in finding that defendant had voluntarily consented to the blood draw where it did not hold a suppression hearing or consider evidence regarding the voluntariness of consent. Dortch v. State, 2018 Ark. 135, 544 S.W.3d 518 (2018) (decision under prior law).

5-65-204. Validity — Approved methods.

(a)(1) As used in this chapter, § 5-10-105, § 5-75-101 et seq., and § 5-76-101 et seq. [repealed], "alcohol concentration" means either:

(A) Grams of alcohol per one hundred milliliters (100 ml) or one hundred cubic centimeters (100 cc) of blood; or

(B) Grams of alcohol per two hundred ten liters (210 l) of breath.

(2) The alcohol concentration of urine, saliva, or other bodily substance is based upon grams of alcohol per one hundred milliliters (100 ml) or one hundred cubic centimeters (100 cc) of blood, the same being percent weight per volume or percent alcohol concentration.

(b)(1)(A) A chemical test made to determine the presence and amount of alcohol in a person's blood, urine, saliva, or breath to be considered valid under this chapter shall be performed according to a method approved by the Department of Health and State Board of Health or by an individual possessing a valid certificate issued by the department for this purpose.

(B) The department may:

(i) Approve satisfactory techniques or methods for the chemical test;

(ii) Ascertain the qualifications and competence of an individual to conduct the chemical test; and

(iii) Issue a certificate that is subject to termination or revocation at the discretion of the department.

(C)(i) An auxiliary law enforcement officer appointed as a reserve law enforcement officer and certified by the department in the operation of an instrument used to determine the alcohol content of the breath may operate an instrument used to determine the alcohol content of the breath under this chapter.

(ii) The department shall promulgate rules to implement subdivision (b)(1)(C)(i) of this section.

(2) However, a method of chemical analysis of a person's blood, urine, saliva, or other bodily substance made by the State Crime Laboratory for determining the presence of one (1) or more controlled substances or any intoxicant is exempt from approval by the department or the board.

(c)(1) Blood may be drawn by a person who is licensed, certified, or otherwise authorized by law to perform venous blood draws when a person consents to the procedure or when a warrant or court order has been issued to take a sample of the person's blood.

(2) When a blood sample is taken at the request of a law enforcement officer based on exigent circumstances, the blood may only be drawn by a physician or a licensed nurse.

(3) The limitations under subdivisions (c)(1) and (2) of this section do not apply to the taking of a breath, saliva, or urine specimen.

(d)(1) The person tested may have a physician or a qualified technician, registered nurse, or other qualified person of his or her own choice administer a complete chemical test in addition to any chemical test administered at the direction of a law enforcement officer.

(2) The law enforcement officer shall advise the person in writing of the right provided in subdivision (d)(1) of this section and that if the person chooses to have an additional chemical test and the person is found not guilty, the arresting law enforcement agency shall reimburse the person for the cost of the additional chemical test.

(3) The refusal or failure of a law enforcement officer to advise a person of the right provided in subdivision (d)(1) of this section and to permit and assist the person to obtain a chemical test under subdivision (d)(1) of this section precludes the admission of evidence relating to a chemical test taken at the direction of a law enforcement officer.

(e) Upon the request of the person who submits to a chemical test at the request of a law enforcement officer or because a warrant has been issued to take a sample of the person's blood, full information concerning the chemical test shall be made available to the person or to his or her attorney.

(f)(1) A person who is licensed, certified, or otherwise authorized by law to perform a venous blood draw and any institution or entity employing or using the services of the person is not liable for violating a criminal law of this state in connection with withdrawing blood at the request of a law enforcement officer under this chapter.

(2) A person who is licensed, certified, or otherwise authorized by law to perform a venous blood draw, and any institution or entity employing or using the services of the person is immune from civil and regulatory liability in connection with withdrawing blood at the request of a law enforcement officer under this chapter, unless the person is negligent in connection with the withdrawal of the blood.

(3) The immunity granted under this subsection is not conditioned upon the existence of express consent, probable cause, a search warrant, or a court order.

History. Acts 1969, No. 106, §§ 1, 2; 1971, No. 55, § 1; 1971, No. 306, § 1; 1973, No. 127, § 1; 1975, No. 660, § 1; 1983, No. 549, § 11; 1985, No. 169, § 1; A.S.A. 1947, §§ 75-1045, 75-1046; Acts 1989, No. 361, § 1; 2001, No. 561, §§ 9, 10; 2005, No. 886, § 1; 2011, No. 1240, § 1; 2013, No. 361, § 6; 2017, No. 1031, §§ 2, 3; 2021, No. 990, § 1.

Amendments. The 2017 amendment inserted "or because a warrant has been issued to take a sample of the person's blood" in (c)(1) and (e).

The 2021 amendment rewrote (c); and added (f).

5-65-205. Refusal to submit to a chemical test.

(a)(1) If a person under arrest refuses upon the request of a law enforcement officer to submit to a chemical test designated by the law enforcement agency as provided in § 5-65-202:

(A) A chemical test shall not be given;

(B) The person's motor vehicle operator's license, permit, or other evidence of driving privilege shall be seized by the law enforcement officer; and

(C) The law enforcement officer shall immediately deliver to the person from whom the motor vehicle operator's license, permit, or other evidence of driving privilege was seized a temporary driving permit under § 5-65-402.

(2) Refusal to submit to a chemical test under this subsection is a strict liability offense and is a violation.

(b)(1) The Office of Driver Services shall suspend or revoke the driving privilege of an arrested person who refuses to submit to a chemical test under this subchapter.

(2)(A) A person who refuses to submit to a chemical test of his or her breath, saliva, or urine for the purpose of determining the alcohol concentration or controlled substance content of the person's blood or breath shall have his or her driving privileges:

(i) Suspended for one hundred eighty (180) days for a first offense;

(ii) Suspended for two (2) years for a second offense occurring within five (5) years of the first offense;

(iii) Revoked for three (3) years for a third offense occurring within five (5) years of the first offense; and

(iv) Revoked for his or her lifetime for a fourth offense occurring within five (5) years of the first offense.

(B) The office may issue an ignition interlock restricted license under § 5-65-118 immediately, but only:

(i) To a person who is arrested for a first offense under this section; and

(ii) When the person is arrested for operating or being in actual physical control of a motor vehicle or motorboat while intoxicated by the ingestion of alcohol.

(C) The restricted driving permit provision of § 5-65-120 does not apply to a suspension for a first offense under this section.

(c) The office shall consider any of the following that occurred within the five (5) years immediately before the current offense a previous offense for the purposes of enhancing the administrative penalty under this section:

(1) A conviction for an offense of refusing to submit to a chemical test; and

(2) A suspension or revocation of driving privileges for an arrest for refusing to submit to a chemical test when the person was not subsequently acquitted of the criminal charge.

(d) The office shall deny the issuance of a license or permit to operate a motor vehicle to a person who is a resident and who violates this section but who does not have a license or permit to operate a motor vehicle, in addition to any other penalty under this section, for the following periods of time:

(1) Six (6) months for a first offense; and

(2) One (1) year for a second or subsequent offense.

History. Acts 1969, No. 106, § 1; 1971, No. 55, § 1; 1971, No. 306, § 1; 1973, No. 127, § 1; 1975, No. 660, § 1; 1983, No. 549, § 11; A.S.A. 1947, § 75-1045; Acts 1987, No. 277, § 1; 1995, No. 802, §§ 4, 5; 1999, No. 1077, § 15; 2001, No. 1501, § 3; 2003, No. 1779, § 2; 2005, No. 1234, § 1; 2007, No. 712, § 2; 2009, No. 359, § 4; 2009, No. 633, § 4, 2009, No. 748, § 30; 2013, No. 361, §§ 7, 8; 2015, No. 299, § 9; 2015, No. 1155, § 12; 2017, No. 333, § 5; 2017, No. 1031, § 4.

Amendments. The 2017 amendment by No. 333 inserted "concentration" in the introductory language of (b)(2)(A).

The 2017 amendment by No. 1031 deleted "blood" preceding "breath" in (b)(2)(A).

CASE NOTES

Analysis

Constitutionality.
Conviction.

Constitutionality.

Defendant's constitutional challenge to § 5-65-202(a)(3) and subdivision (a)(2) of this section was rejected where the statutes did not clearly and unmistakably conflict with the holding of Missouri v. McNeely, 569 U.S. 141, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013). Burr v. State, 2016 Ark. App. 182, 487 S.W.3d 395 (2016).

In view of defendant's arrest on reasonable cause, the reduced expectation of privacy as a motorist and an arrestee, the minimal intrusiveness of a breath test, and the compelling interest in combating drunk driving, the implied-consent statute did not clearly and unmistakably violate the Fourth Amendment. Burr v. State, 2016 Ark. App. 182, 487 S.W.3d 395 (2016).

Conviction.

Defendant's conviction under this section for refusal to submit to a test was affirmed; contrary to defendant's argument on appeal, the officer did tell defendant that he did not have a right to an attorney before the test. Lockhart v. State, 2017 Ark. 13, 508 S.W.3d 869 (2017).

5-65-208. Motor vehicle and motorboat accidents — Testing required.

(a) When the driver of a motor vehicle or operator of a motorboat on the waters of this state is involved in an accident resulting in loss of human life, when there is reason to believe death may result, or when a person sustains serious physical injury, a chemical test of the driver's or operator's breath, saliva, or urine shall be administered to the driver or operator, even if he or she is fatally injured, to determine the presence of and percentage of alcohol concentration or the presence of a controlled substance, or both, in the driver's or operator's body.

(b)(1) A chemical test under this section shall be ordered as soon as practicable by one (1) of the following persons or agencies:

(A) The law enforcement agency investigating the accident;

(B) The physician in attendance; or

(C) Other person designated by state law.

(2)(A) The person who conducts the chemical test of the driver's or operator's breath, saliva, or urine under this section shall forward the results of the chemical test to the Division of Arkansas State Police, and the division shall establish and maintain the results of the chemical tests required by subsection (a) of this section in a database.

(B) The information in the database shall reflect the number of fatal motor vehicle accidents in which:

(i) Alcohol was found to be a factor, including the percentage of alcohol concentration involved;

(ii) Controlled substances were found to be a factor, including a list of the controlled substances found, the specific class of the controlled substance, and the amount; and

(iii) Both alcohol and a controlled substance were found to be factors, including the percentage of alcohol concentration involved, as well as a list of the controlled substances found and the amount.

(c) The result of a chemical test required by this section shall be reported to the division and may be used by state and local officials for:

(1) Statistical purposes that do not reveal the identity of the deceased person; or

(2) Any law enforcement purpose, including prosecution for the violation of any law.

(d) Absent exigent circumstances, a test of a person's blood under this section to determine the person's alcohol concentration, controlled substance content, or other intoxicating substance content in his or her blood requires a warrant based on probable cause that the person was operating or in actual physical control of a motorboat on the waters of this state or a motor vehicle while intoxicated or the person's express consent to the test.

History. Acts 1995, No. 711, § 2; 1995, No. 1105, § 2; 2003, No. 950, § 1; 2009, No. 423, § 1; 2011, No. 1120, § 13; 2013, No. 361, § 9; 2015, No. 299, § 12; 2017, No. 1031, § 5; 2019, No. 654, § 3; 2021, No. 147, § 2.

A.C.R.C. Notes. Acts 2019, No. 654, § 1, provided: "Legislative intent.

"(a)(1) It is the intent of the General Assembly to provide for the safety of the public in instances in which serious physical injury occurs on the roadways and waterways of this state as a result of a person's operating a motor vehicle or motorboat while he or she is under the influence of alcohol or a controlled substance.

"(2) A motor vehicle in this instance would include an all-terrain vehicle or agricultural vehicle that is often not operated on the roadways of the state and instead operated in an off-road or agricultural field capacity.

"(b) It is not the intent of the General Assembly to provide a way for a law enforcement officer to enter onto private land when the law enforcement officer lacks probable cause or other lawful reasons to enter onto private land."

Amendments. The 2017 amendment deleted "blood" preceding "breath" in (a) and (b)(2)(A); and added (d).

The 2019 amendment inserted "or when a person sustains serious physical injury" in (a); and made stylistic changes.

The 2021 amendment, in (d), added "Absent exigent circumstances" and "or the person's express consent to the test".

CASE NOTES

Suppression Denied.

Defendant driver involved in a 2014 accident that resulted in serious injuries and the death of a child was not entitled to suppression of the blood alcohol test in his criminal trial because the good-faith exception to the exclusionary rule applied under the circumstances presented; defendant was nonresponsive at the scene of the accident and, according to the arresting officer, unconscious, and the officer believed the law required him to obtain a blood draw from both drivers because the accident involved a fatality. Parks v. State, 2020 Ark. App. 267, 599 S.W.3d 382 (2020) (decided under prior version of statute).

Circuit court did not err in refusing to suppress defendant's blood test results

when defendant contended that the version of this section that was in effect when defendant was subjected to a warrantless blood draw in 2015 was unconstitutional; the circuit court concluded that the state troopers acted in good faith in obtaining the warrantless blood draw, making the exclusionary rule inapplicable and the blood test results admissible. Brissette v. State, 2020 Ark. App. 303, 601 S.W.3d 156 (2020).

Subchapter 3 — Underage Driving or Boating Under the Influence Law

SECTION.
5-65-307. Alcohol and driving education or alcoholism treatment program.
SECTION.
5-65-309. Implied consent.

5-65-307. Alcohol and driving education or alcoholism treatment program.

(a)(1)(A) A person who has his or her driving privileges suspended, revoked, or denied for violating § 3-3-203, § 5-65-310, or § 5-65-303 is required to complete an alcohol and driving education program for underage drivers as prescribed and approved by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services or an alcoholism treatment program licensed by the division, or both, in addition to any other penalty provided in this chapter.

(B) A person who subsequently violates § 3-3-203 or § 5-65-303 while his or her driving privileges are suspended or revoked for violating § 3-3-203 or § 5-65-303 is also required to complete an approved alcohol and driving education program or alcoholism treatment program for each additional violation.

(2) The division shall approve only those programs in alcohol and driving education that are targeted at the underage driving group and are intended to intervene and prevent repeat occurrences of driving under the influence or driving while intoxicated.

(3)(A)(i) The alcohol and driving education program may collect a program fee of up to one hundred twenty-five dollars ($125) per enrollee to offset program costs.

(ii) A person ordered to complete an alcohol and driving education program or an alcoholism treatment program under this section may be required to pay a fee of up to twenty-five dollars ($25.00) to offset the additional costs associated with reporting requirements under this subchapter in addition to the costs collected for the program.

(B) An approved alcohol and driving education program shall report monthly to the division all revenue derived from these fees.

(b) The person shall furnish proof of attendance at and completion of the alcohol and driving education program or alcoholism treatment program required under subdivision (a)(1) of this section prior to reinstatement of his or her driving privilege.

(c) The division may promulgate rules reasonably necessary to carry out the purposes of this section regarding the approval and monitoring of the alcohol and driving education programs.

(d)(1)(A) A person whose driving privilege is suspended or revoked for violating § 5-65-303 or § 5-65-310 shall:

(i) Both:

(a) Furnish proof of attendance at and completion of the alcohol and driving education program or alcoholism treatment program required under subdivision (a)(1) of this section and at a victim impact panel as provided in § 5-65-121 before reinstatement of his or her suspended or revoked driving privilege; and

(b) Pay any fee for reinstatement required under § 5-65-119, § 5-65-304, or § 5-65-121; or

(ii) Furnish proof of dismissal or acquittal of the charge on which the suspension or revocation is based.

(B) An application for reinstatement shall be made to the Office of Driver Services.

(2) Even if a person has filed a de novo petition for review under § 5-65-402, the person is entitled to reinstatement of driving privileges upon complying with this subsection and is not required to postpone reinstatement until the disposition of the de novo review in circuit court has occurred.

(3)(A) A person whose driving privilege is suspended under this subchapter may enroll in an alcohol education program prior to disposition of the offense by the circuit court or district court but is not entitled to a refund of fees paid if the charges are dismissed or if the person is acquitted of the charges.

(B) A person who enrolls in an alcohol education program is not entitled to any refund of fees paid if the person is subsequently acquitted.

(e) An alcohol and driving education program required by this section shall remit the fees imposed under this section to the division.

History. Acts 1993, No. 863, § 7; 1995, No. 1256, § 20; 1995 (1st Ex. Sess.), No. 13, § 4; 1999, No. 1077, § 19; 2003, No. 1462, § 3; 2005, No. 1768, § 4; 2007, No. 251, § 3; 2009, No. 946, § 2; 2013, No. 1107, §§ 7, 8; 2015, No. 299, § 13; 2017, No. 913, § 22.

Amendments. The 2017 amendment substituted "Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services" for "Division of Behavioral Health Services" in (a)(1)(A).

5-65-309. Implied consent.

(a) An underage person who operates a motorboat on the waters of this state or a motor vehicle or is in actual physical control of a motor vehicle or motorboat in this state is deemed to have given consent, subject to § 5-65-203, to a chemical test of his or her breath, saliva, or urine for the purpose of determining the alcohol concentration or controlled substance content of his or her breath or blood if:

(1) The underage person is arrested for any offense arising out of an act alleged to have been committed while the underage person was driving or boating while under the influence or driving or boating while there was an alcohol concentration of two hundredths (0.02) but less than eight hundredths (0.08) in his or her breath, blood, saliva, or urine;

(2) The underage person is involved in an accident while operating or in actual physical control of a motorboat on the waters of this state or a motor vehicle; or

(3) The underage person is stopped by a law enforcement officer who has reasonable cause to believe that the underage person, while operating or in actual physical control of a motorboat on the waters of this state or a motor vehicle, is under the influence or has an alcohol concentration of two hundredths (0.02) but less than eight hundredths (0.08) in his or her breath or blood.

(b) An underage person who is dead, unconscious, or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn the consent provided by subsection (a) of this section, and a chemical test may be administered subject to § 5-65-203.

(c) A test of an underage person's blood under this section to determine the underage person's alcohol concentration, controlled substance content, or other intoxicating substance content in his or her blood requires a warrant based on probable cause that the underage person was operating or in actual physical control of a motorboat on the waters of this state or a motor vehicle while intoxicated.

History. Acts 1993, No. 863, § 9; 2001, No. 561, § 15; 2013, No. 361, § 10; 2015, No. 299, § 13; 2017, No. 1031, § 6; 2019, No. 380, § 1.

Amendments. The 2017 amendment deleted "blood" preceding "breath, saliva" in (a); and added (c).

The 2019 amendment, in (c), substituted "underage person's" for "person's" twice and inserted the third occurrence of "underage".

Subchapter 4 — Administrative Driver's License Suspension

SECTION.

5-65-401. Definitions.

5-65-402. Surrender of license or permit to arresting officer.

5-65-403. Notice and receipt from arresting officer.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the

fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

5-65-401. Definitions.

As used in this subchapter:

(1) "Disqualification" means a prohibition against driving a commercial motor vehicle;

(2) "Immobilization" means revocation or suspension of the registration or license plate of a motor vehicle; and

(3) "Sworn report" means a signed and written statement of a certified law enforcement officer, under penalty of perjury, on a form provided by the Secretary of the Department of Finance and Administration.

History. Acts 1999, No. 1077, § 21; 2019, No. 910, § 3360.

Amendments. The 2019 amendment substituted "Secretary" for "Director" in (3).

5-65-402. Surrender of license or permit to arresting officer.

(a)(1)(A) At the time of arrest for violating § 3-3-203(a), § 5-27-503(a)(3), § 5-65-103, § 5-65-205, § 5-65-303, § 5-65-310, § 27-23-114(a)(1), § 27-23-114(a)(2), or § 27-23-114(a)(5), the arrested person shall immediately surrender his or her license, permit, or other evidence of driving privilege to the arresting law enforcement officer.

(B) The arresting law enforcement officer shall seize the license, permit, or other evidence of driving privilege surrendered by the arrested person or found on the arrested person during a search.

(C)(i) If a juvenile, as defined in the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., is arrested for violating § 3-3-203(a) or § 5-27-503(a)(3), the arresting officer shall issue the juvenile a citation to appear for a juvenile intake with a juvenile intake officer.

(ii) The arresting officer shall forward a copy of the citation and the license, permit, or other evidence of the driving privilege to the juvenile office before the scheduled juvenile intake.

(iii) Juveniles subject to the jurisdiction of the circuit court under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., shall not be subject to this section, except as provided in this subdivision (a)(1).

(2)(A)(i) If the license, permit, or other evidence of driving privilege seized by the arresting law enforcement officer has not expired and otherwise appears valid to the arresting law enforcement officer, the arresting law enforcement officer shall issue to the arrested person a dated receipt for that license, permit, or other evidence of driving privilege on a form prescribed by the Office of Driver Services.

(ii) This receipt shall be recognized as a license and authorizes the arrested person to operate a motor vehicle for a period not to exceed thirty (30) days.

(B)(i) The receipt form shall contain and shall constitute a notice of suspension, disqualification, or revocation of driving privileges by the Office of Driver Services, effective in thirty (30) days, notice of the right to a hearing within twenty (20) days, and if a hearing is to be requested, as notice that the hearing request is required to be made within seven (7) calendar days of the notice being given.

(ii) The receipt form shall also contain phone numbers and the address of the Office of Driver Services and inform the driver of the procedure for requesting a hearing.

(C) If the Office of Driver Services is unable to conduct a hearing within the twenty-day period, a temporary permit shall be issued and is valid until the date of the hearing.

(D)(i) The seized license, permit, or other evidence of driving privilege and a copy of the receipt form issued to the arrested person shall be attached to the sworn report of the arresting law enforcement officer and shall be submitted by mail or in person to the Office of Driver Services or its designated representative within seven (7) days of the issuance of the receipt.

(ii) The failure of the arresting law enforcement officer to timely file the sworn report does not affect the authority of the Office of Driver Services to suspend, disqualify, or revoke the driving privilege of the arrested person.

(3)(A) Any notice from the Office of Driver Services required under this subchapter that is not personally delivered shall be sent by first class mail and is deemed to have been delivered on the date when postmarked and shall be sent to the last known address on file with the Office of Driver Services.

(B) Refusal of the addressee to accept delivery or attempted delivery of the notice at the address obtained by the arresting law enforcement officer or on file with the Office of Driver Services does not constitute nonreceipt of notice.

(C) For any notice that is personally delivered, the person shall be asked to sign a receipt acknowledging that he or she received the required notice.

(4)(A) The Office of Driver Services or its designated official shall suspend, revoke, or disqualify the driving privilege of an arrested person or any nonresident driving privilege of an arrested person when it receives a sworn report from the arresting law enforcement officer that he or she had reasonable grounds to believe the arrested person:

(i) Was under twenty-one (21) years of age and purchased or was in possession of intoxicating liquor, wine, or beer in violation of § 3-3-203(a);

(ii) Was under twenty-one (21) years of age and attempted to purchase an alcoholic beverage or use a fraudulent or altered personal identification document for the purpose of purchasing an alcoholic beverage illegally or other material or substance restricted to adult purchase or possession under existing law in violation of § 5-27-503(a)(3); or

(iii) Had been operating or was in actual physical control of a motorboat on the waters of this state or a motor vehicle in violation of § 5-65-103, § 5-65-303, § 27-23-114(a)(1), or § 27-23-114(a)(2) and the sworn report is accompanied by:

(a) A written chemical test report or a sworn report that the arrested person was operating or in actual physical control of a motorboat on the waters of this state or motor vehicle in violation of § 5-65-103, § 5-65-303, or § 27-23-114; or

(b) A sworn report that the arrested person refused to submit to a chemical test of breath, saliva, or urine for the purpose of determining the alcohol concentration or controlled substance content of the arrested person's breath or blood in violation of § 5-65-205, § 5-65-310, or § 27-23-114(a)(5).

(B) The suspension, disqualification, or revocation shall be based as follows:

(i) The driving privileges of a person violating § 5-65-103 shall be suspended or revoked as provided by § 5-65-104;

(ii) The driving privileges of a person violating § 5-65-205(a) shall be suspended or revoked as provided by § 5-65-205(b);

(iii) The driving privileges of a person violating § 5-65-303 shall be suspended or revoked as provided by § 5-65-304(b);

(iv) The driving privileges of a person violating § 5-65-310(a) shall be suspended or revoked as provided by § 5-65-310(b);

(v) The driving privileges of a person violating § 27-23-114(a)(1) or § 27-23-114(a)(2) shall be disqualified as provided by § 27-23-112;

(vi) The driving privileges of a person violating § 27-23-114(a)(5) shall be disqualified as provided by § 27-23-112;

(vii) The driving privileges of a person violating § 3-3-203(a) shall be suspended, revoked, or disqualified as provided by § 3-3-203(e); and

(viii) The driving privileges of a person violating § 5-27-503(a)(3) shall be suspended, revoked, or disqualified as provided by § 5-27-503(d).

(5) In addition to any other penalty provided for in this section, if the arrested person is a resident without a license or permit to operate a motor vehicle in this state:

(A) The Office of Driver Services shall deny to that arrested person the issuance of a license or permit for a period of six (6) months for a first offense; and

(B) For a second or subsequent offense by a resident without a license or permit to operate a motor vehicle, the Office of Driver Services shall deny to that arrested person the issuance of a license or permit for a period of one (1) year.

(6)(A)(i) If the arrested person is a nonresident, the arrested person's driving privilege in Arkansas shall be suspended in the same manner as that of a resident.

(ii) The Office of Driver Services shall notify the office that issued the nonresident's driving privilege of the action taken by the Office of Driver Services.

(B) When the arrested person is a nonresident without a license or permit to operate a motor vehicle, the Office of Driver Services shall notify the office of issuance for that arrested person's state of residence of action taken by the Office of Driver Services.

(7)(A) Upon the written request of a person whose driving privilege has been revoked, denied, disqualified, or suspended, or who has received a notice of revocation, suspension, disqualification, or denial by the arresting law enforcement officer, the Office of Driver Services shall grant the person an opportunity to be heard if the request is received by the Office of Driver Services within seven (7) calendar days after the notice of the revocation, suspension, disqualification, or denial is given in accordance with this section or as otherwise provided in this chapter.

(B) A request described in subdivision (a)(7)(A) of this section does not operate to stay the revocation, suspension, disqualification, or denial by the Office of Driver Services until the disposition of the hearing.

(8)(A) The hearing shall be before the Office of Driver Services or its authorized agent, in the office of the Revenue Division of the Department of Finance and Administration nearest the county where the alleged event occurred for which the person was arrested, unless the Office of Driver Services or its authorized agent and the arrested person agree otherwise to the hearing's being held in some other county or that the Office of Driver Services or its authorized agent may schedule the hearing or any part of the hearing by telephone and conduct the hearing by telephone conference call.

(B) The hearing shall not be recorded.

(C) At the hearing, the burden of proof is on the state and the decision shall be based on a preponderance of the evidence.

(D) The scope of the hearing shall cover the issues of whether the arresting law enforcement officer had reasonable grounds to believe that the person:

(i) Had been operating or was in actual physical control of a motorboat on the waters of this state or a motor vehicle or commercial motor vehicle while:

(a) Intoxicated or impaired;

(b) The person's blood alcohol concentration measured by weight of alcohol in the person's blood was equal to or greater than the blood alcohol concentration prohibited by § 5-65-103(a)(2);

(c) The blood alcohol concentration of a person under twenty-one (21) years of age was equal to or greater than the blood alcohol concentration prohibited by § 5-65-303; or

(d) The person's blood alcohol concentration measured by weight of alcohol in the person's blood was equal to or greater than the blood alcohol concentration prohibited by § 27-23-114;

(ii) Refused to submit to a chemical test of the breath, saliva, or urine for the purpose of determining the alcohol concentration or controlled substance content of the person's breath or blood and whether the person was placed under arrest;

(iii) Was under twenty-one (21) years of age and purchased or was in possession of any intoxicating liquor, wine, or beer; or

(iv) Was under twenty-one (21) years of age and attempted to purchase an alcoholic beverage or use a fraudulent or altered personal identification document for the purpose of purchasing an alcoholic beverage illegally or other material or substance restricted to adult purchase or possession under existing law.

(E)(i) The Office of Driver Services or its agent at the hearing shall consider any document submitted to the Office of Driver Services by the arresting law enforcement agency, document submitted by the arrested person, and the statement of the arrested person.

(ii) The Office of Driver Services shall not have the power to compel the production of documents or the attendance of witnesses.

(F)(i) If the revocation, suspension, disqualification, or denial is based upon a chemical test result indicating that the arrested person was intoxicated or impaired and a sworn report from the arresting law enforcement officer, the scope of the hearing shall also cover the issues as to whether:

(a) The arrested person was advised that his or her privilege to drive would be revoked, disqualified, suspended, or denied if the chemical test result reflected an alcohol concentration equal to or in excess of the amount by weight of blood provided by law or the presence of other intoxicating substances;

(b) The breath, blood, saliva, or urine specimen was obtained from the arrested person within the established and certified criteria of the Department of Health;

(c) The chemical testing procedure used was in accordance with existing rules; and

(d) The chemical test result in fact reflects an alcohol concentration, the presence of other intoxicating substances, or a combination of alcohol concentration or other intoxicating substance.

(ii) If the revocation, suspension, disqualification, or denial is based upon the refusal of the arrested person to submit to a chemical test as provided in § 5-65-205, § 5-65-310, or § 27-23-114(a)(5), reflected in a sworn report by the arresting law enforcement officer, the scope of the hearing shall also include whether:

(a) The arrested person refused to submit to the chemical test; and

(b) The arrested person was informed that his or her privilege to drive would be revoked, disqualified, suspended, or denied if the arrested person refused to submit to the chemical test.

(b) After the hearing, the Office of Driver Services or its authorized agent shall order the revocation, suspension, disqualification, or denial to be rescinded or sustained and shall then advise any person whose driving privilege is revoked, suspended, or denied that he or she may request a restricted permit as otherwise provided for by this chapter.

(c)(1)(A) A person adversely affected by the hearing disposition order of the Office of Driver Services or its authorized agent may file a de novo petition for review within thirty (30) days in the circuit court in the county in which the offense took place.

(B) A copy of the decision of the Office of Driver Services shall be attached to the petition.

(C) The petition shall be served on the Secretary of the Department of Finance and Administration under Rule 4 of the Arkansas Rules of Civil Procedure.

(2)(A) The filing of a petition for review does not stay or place in abeyance the decision of the Office of Driver Services or its authorized agent.

(B) If the circuit court issues an order staying the decision or placing the decision in abeyance, the circuit court shall transmit a copy of the order to the Office of Driver Services in the same manner that convictions and orders relating to driving records are sent to the Office of Driver Services.

(C)(i) The circuit court shall hold a final hearing on the de novo review within one hundred twenty (120) days after the date that the order staying the decision or placing the decision in abeyance is entered.

(ii) The circuit court may conduct the final hearing by telephone conference with the consent of the parties.

(3) An administrative hearing held under this section is exempt from the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4)(A) On review, the circuit court shall hear the case de novo in order to determine based on a preponderance of the evidence whether a ground exists for revocation, suspension, disqualification, or denial of the person's privilege to drive.

(B) If the results of a chemical test of blood, breath, saliva, or urine are used as evidence in the suspension, revocation, or disqualification of the person's driving privilege, then § 5-65-206 shall apply in the circuit court proceeding.

(d)(1) A decision rendered at an administrative hearing held under this section shall have no effect on any criminal case arising from a violation of § 3-3-203(a), § 5-27-503(a)(3), § 5-65-103, § 5-65-205, § 5-65-303, § 5-65-310, § 27-23-114(a)(1), § 27-23-114(a)(2), or § 27-23-114(a)(5).

(2) Any decision rendered by a court of law for a criminal case arising from any violation of § 3-3-203(a), § 5-27-503(a)(3), § 5-65-103, § 5-65-205, § 5-65-303, § 5-65-310, § 27-23-114(a)(1), § 27-23-114(a)(2), or § 27-23-114(a)(5) shall affect the administrative suspension, disqualification, or revocation of the driving privilege as follows:

(A) A plea of guilty or nolo contendere or a finding of guilt by the court has no effect on an administrative hearing held under this section;

(B)(i) An acquittal on the charges or a dismissal of charges serves to reverse the suspension, disqualification, or revocation of the driving privilege suspended or revoked under this section.

(ii) The Office of Driver Services shall reinstate the person's driving privilege at no cost to the person, and the charges shall not be used to determine the number of previous offenses when administra-

tively suspending, disqualifying, or revoking the driving privilege of an arrested person in the future; and

(C) The Office of Driver Services shall convert any initial administrative suspension or revocation of a driving privilege for violating § 5-65-103 to a suspension or revocation for violating § 5-65-303 if the person is convicted of violating § 5-65-303 instead of § 5-65-103.

(e) A person whose privilege to drive has been denied, suspended, disqualified, or revoked shall remain under the denial, suspension, disqualification, or revocation and remain subject to penalties as provided in § 5-65-105 until such time as that person applies for, and is granted by the Office of Driver Services, reinstatement of the privilege to drive.

(f) The administrative suspension, disqualification, or revocation of a driving privilege as provided for by this section is supplementary to and in addition to a suspension, disqualification, or revocation of a driving privilege that is ordered by a court of competent jurisdiction for an offense under §§ 5-64-710, 5-65-116 [repealed], and 27-16-914, or other traffic or criminal offense in which a suspension, disqualification, or revocation of the driving privilege is a penalty for the violation.

(g)(1)(A) A person whose driving privilege is suspended or revoked under this section shall:

(i) Both:

(a) Furnish proof of attendance at and completion of the alcoholism treatment program, alcohol education program, or alcohol and driving education program required by § 5-65-104(b)(1) or § 5-65-307(a)(1) and, if applicable, at a victim impact panel as provided in § 5-65-121 before reinstatement of his or her suspended or revoked driving privilege; and

(b) Pay a fee for reinstatement required under § 5-65-119, § 5-65-304, or, if applicable, § 5-65-121; or

(ii) Furnish proof of dismissal or acquittal of the charge on which the suspension or revocation is based.

(B) An application for reinstatement shall be made to the Office of Driver Services.

(2) Even if a person has filed a de novo petition for review under subsection (c) of this section, the person is entitled to reinstatement of driving privileges upon complying with this subsection and is not required to postpone reinstatement until the disposition of the de novo review in circuit court has occurred.

(3) A person whose driving privilege is suspended or revoked under this section may enroll in an alcohol education program prior to disposition of the offense by the circuit court or district court but is not entitled to a refund of a fee paid if the charge is dismissed or if the person is acquitted of the charge.

(h) Except as provided in subsection (a) of this section, this section shall not apply to juveniles subject to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

History. Acts 1999, No. 1077, § 21; 2003, No. 541, §§ 2-5; 2005, No. 1535, § 2; 2005, No. 1768, § 6; 2007, No. 922, § 2; 2009, No. 748, § 32; 2009, No. 946, § 3; 2009, No. 956, §§ 2, 3; 2011, No. 610, § 1; 2013, No. 361, §§ 11-14; 2013, No. 488, § 1; 2015, No. 299, § 14; 2017, No. 1031, §§ 7, 8; 2019, No. 910, § 3361; 2019, No. 1087, § 1.

Amendments. The 2017 amendment deleted "blood" preceding "breath, saliva" in (a)(4)(A)(iii)*(b)* and (a)(8)(D)(ii).

The 2019 amendment by No. 910 substituted "Secretary" for "Director" in (c)(1)(C).

The 2019 amendment by No. 1087 substituted "first class mail" for "certified mail" in (a)(3)(A).

CASE NOTES

Sufficiency of Notice.

Suspension of a motorist's commercial driving privileges and noncommercial driving privileges by the Office of Driver Services was appropriate because the motorist's rights as to his refusal to submit to a chemical test were explained to him during a traffic stop, and he indicated that he understood those rights. The statement-of-rights form adequately communicated the choices available and the possible consequences of those choices. Stuart v. Ark. Dep't of Fin. & Admin., 2017 Ark. App. 139, 515 S.W.3d 656 (2017).

5-65-403. Notice and receipt from arresting officer.

(a) At the time of arrest for violating § 5-65-103, § 5-65-303, § 27-23-114(a)(1), or § 27-23-114(a)(2), the arresting law enforcement officer shall provide written notice to the arrested person:

(1) That the registration of a motor vehicle owned by the arrested person is suspended effective in thirty (30) days if the arrested person's driving privileges have been suspended, disqualified, or revoked for violating § 5-65-103, § 5-65-303, § 27-23-114(a)(1), or § 27-23-114(a)(2) in the previous five (5) years;

(2) Of the right to a hearing within twenty (20) days; and

(3) That the hearing request is required to be made within seven (7) calendar days of the notice being given if the arrested person wants to request a hearing.

(b) The receipt shall also contain phone numbers and the address of the Office of Driver Services and inform the arrested person of the procedure for requesting a hearing.

(c) If the Office of Driver Services is unable to conduct a hearing within the twenty-day period, a temporary permit shall be issued and is valid until the date of the hearing.

(d)(1) The seized license, permit, or other evidence of driving privilege and a copy of the receipt form issued to the arrested person shall be:

(A) Attached to the sworn report of the arresting law enforcement officer; and

(B) Submitted by mail or in person to the Secretary of the Department of Finance and Administration or his or her designated representative within seven (7) days of the issuance of the receipt.

(2) The failure of the arresting law enforcement officer to timely file the sworn report does not affect the authority of the Office of Driver Services to suspend the registration of a motor vehicle owned by the arrested person.

(e) A notice from the Office of Driver Services required under this section that is not personally delivered shall be sent as provided by § 5-65-402.

(f)(1) If the arrested person is a nonresident, the arrested person's motor vehicle registration in Arkansas shall be suspended in the same manner as that of a resident.

(2) The Office of Driver Services shall notify the out-of-state entity that issued the nonresident's motor vehicle registration of the action taken by the Office of Driver Services.

(g) The hearing shall be held by the Office of Driver Services at the conclusion of any hearing under § 5-65-402 and the scope of the hearing is limited to:

(1) Determining if the arrested person's driving privileges had been suspended, revoked, or disqualified for violation of § 5-65-103, § 5-65-303, § 27-23-114(a)(1), or § 27-23-114(a)(2) in the five (5) years prior to the current offense; and

(2) Determining if any motor vehicle is licensed or registered in the arrested person's name as either owner or co-owner of the motor vehicle.

(h)(1)(A) A person adversely affected by the hearing disposition order of the Office of Driver Services or its authorized agent may file a de novo petition for review within thirty (30) days in the circuit court in the county where the offense took place.

(B) The filing of a petition for review does not stay or place in abeyance the decision of the Office of Driver Services or its authorized agent.

(2) An administrative hearing held under this section is exempt from the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) The circuit court shall hear the case de novo on review in order to determine whether, based on a preponderance of the evidence, a ground exists for suspension of the person's motor vehicle registration.

(i) The suspension ordered shall be equal to the suspension of driving privileges ordered under § 5-65-402 or one (1) year, whichever is longer, but shall not exceed five (5) years.

(j)(1)(A) Upon determination that a person is completely dependent on the motor vehicle for the necessities of life, the secretary may grant a restricted registration to a family member or co-owner of any immobilized motor vehicle.

(B) A restricted registration is not valid for use by the person whose driving privileges have been suspended or revoked.

(2) Operation of a motor vehicle in a manner inconsistent with the restricted registration or license plate has the same effect as operating an unlicensed motor vehicle.

(k) If the secretary orders immobilization of a motor vehicle, notice of immobilization shall be sent by first-class mail to any persons, other than the arrested person, listed as an owner or co-owner of the immobilized motor vehicle in the records of the Office of Motor Vehicle.

History. Acts 1999, No. 1077, § 21; 2015, No. 299, § 15; 2019, No. 910, §§ 3362, 3363.

Amendments. The 2019 amendment substituted "Secretary" for "Director" in (d)(1)(B); and substituted "secretary" for "director" in (k).

CHAPTER 66

GAMBLING

5-66-118. Lottery, etc. — Tickets.

RESEARCH REFERENCES

ALR. Criminal Actions for Fraudulently Passing or Redeeming Lottery Tickets or Tampering with Lottery Equipment. 32 A.L.R.7th Art. 7 (2018).

CHAPTER 67

HIGHWAYS AND BRIDGES

SECTION.
5-67-103. Attaching signs to utility poles or living plants.
5-67-104. Violation of posted bridge prohibitions.

5-67-103. Attaching signs to utility poles or living plants.

(a)(1) It is unlawful for any person, firm, corporation, or association to nail, staple, or otherwise attach or cause to be nailed, stapled, or otherwise attached any sign, poster, or billboard to any pole used to provide utility, cable, telecommunication, or broadband services or to any living tree, shrub, or other plant located upon the rights-of-way of any public road, highway, or street in this state.

(2) The prohibition described in subdivision (a)(1) of this section does not apply to a warning, safety, or identification sign attached to a pole by a provider of utility, cable, telecommunication, or broadband services or to an attachment authorized under § 14-54-701(a)(3).

(b)(1) Any person, firm, corporation, or association violating a provision of this section is guilty of a violation and upon conviction shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500).

(2) Each day that any violation under subdivision (b)(1) of this section continues constitutes a separate offense.

History. Acts 1967, No. 420, §§ 1, 2; A.S.A. 1947, §§ 41-3362, 41-3363; Acts 2005, No. 1994, § 54; 2021, No. 377, § 1.

Amendments. The 2021 amendment substituted "pole used to provide utility, cable, telecommunication, or broadband services" for "public utility pole" in (a)(1); and rewrote (a)(2).

5-67-104. Violation of posted bridge prohibitions.

(a) It is unlawful for any person owning or operating a motor vehicle that in any way exceeds or violates any properly posted limitation,

regulation, rule, or restriction governing the use of a bridge structure to use the bridge structure so long as the use violates any posted prohibition.

(b)(1) Any unlawful action resulting in a violation of a provision of subsection (a) of this section is a violation and upon conviction the person shall be punished by a fine of not more than two hundred dollars ($200).

(2) The person is liable for the costs to restore the damage and injury to the bridge structure occasioned by the violation.

History. Acts 1971, No. 249, §§ 2, 3; A.S.A. 1947, §§ 41-3365, 41-3366; Acts 2005, No. 1994, § 54; 2019, No. 315, § 169.

Amendments. The 2019 amendment inserted "rule" in (a).

CHAPTER 69

OIL AND GAS

SECTION.

5-69-103. Pipelines and pipeline facilities.

5-69-103. Pipelines and pipeline facilities.

(a) A person upon conviction is guilty of a Class D felony if the person knowingly violates:

(1) Section 14-271-110(a);

(2) An order, safety standard, or rule of the Arkansas Public Service Commission pursuant to § 23-15-205;

(3) Section 23-15-206(b);

(4) Section 23-15-206(c);

(5) Section 23-15-208(a); or

(6) Section 23-15-209(a).

(b) A person upon conviction is guilty of a Class D felony if the person knowingly violates § 14-271-112(a) and:

(1) With respect to the violation, damages or destroys an interstate or intrastate natural gas pipeline facility that results in serious physical injury or actual damage to property of more than fifty thousand dollars ($50,000);

(2) With respect to the violation, damages or destroys an interstate or intrastate natural gas pipeline facility, knows or has reason to know of the damage or destruction, and does not report the damage or destruction promptly to the operator of the interstate or intrastate natural gas pipeline facility or to local law enforcement authorities; or

(3) With respect to the violation, damages an intrastate hazardous liquid pipeline facility that results in the release of more than fifty (50) barrels of hazardous liquid.

(c)(1) A person who knowingly engages in the unauthorized disposal of solid waste within the right-of-way of an interstate or intrastate

pipeline facility or an interstate or intrastate hazardous liquid pipeline facility upon conviction is guilty of a Class D felony.

(2)(A) As used in this subsection, "solid waste" means garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including without limitation solid, liquid, semisolid, or contained gaseous material resulting from industrial operations, commercial operations, mining operations, agricultural operations, or other community activities.

(B) "Solid waste" does not include solid or dissolved material in domestic sewage or solids discovered in materials in irrigation return flows or industrial discharges that are point sources subject to permits under 33 U.S.C. § 1342, as it existed on January 1, 2013, or source, special nuclear, or byproduct material as defined by 42 U.S.C. § 2011 et seq., as it existed on January 1, 2013.

(d) A person who knowingly damages or destroys an interstate or intrastate pipeline facility or an interstate or intrastate hazardous liquid pipeline facility upon conviction is guilty of a:

(1) Class A misdemeanor if the amount of actual damage is one thousand dollars ($1,000) or less;

(2) Class D felony if the amount of actual damage is more than one thousand dollars ($1,000) but less than five thousand dollars ($5,000);

(3) Class C felony if the amount of actual damage is more than five thousand dollars ($5,000) but less than twenty-five thousand dollars ($25,000); or

(4) Class B felony if the amount of actual damage is more than twenty-five thousand dollars ($25,000).

(e) A person who knowingly tampers with, damages, or destroys a pipeline sign or right-of-way marker required by law or rule of the state upon conviction is guilty of a:

(1) Class A misdemeanor if the amount of actual damage is one thousand dollars ($1,000) or less;

(2) Class D felony if the amount of actual damage is more than one thousand dollars ($1,000) but less than five thousand dollars ($5,000);

(3) Class C felony if the amount of actual damage is more than five thousand dollars ($5,000) but less than twenty-five thousand dollars ($25,000); or

(4) Class B felony if the amount of actual damage is more than twenty-five thousand dollars ($25,000).

History. Acts 2013, No. 1343, § 4; 2013, No. 1344, § 5; 2019, No. 315, § 170.

Amendments. The 2019 amendment substituted "or rule" for "rule, or regulation" in (a)(2).

CHAPTER 70
PROSTITUTION

SECTION.
5-70-102. Prostitution.
5-70-103. Sexual solicitation.

5-70-102. Prostitution.

(a) A person commits prostitution if in return for or in expectation of a fee he or she engages in or agrees or offers to engage in sexual activity with any other person.

(b) Prostitution is a:

(1) Class B misdemeanor for the first offense; and

(2) Class A misdemeanor for a second or subsequent offense under this section.

(c) It is not an offense under this section if at the time of the person's commission of or arrest for an act that meets the elements of the offense of prostitution, the person was a victim of trafficking of persons, § 5-18-103.

(d)(1) If a law enforcement agency is investigating an offense under this section that has allegedly been committed by a minor, the law enforcement agency shall make every effort to determine whether the minor, at the time of the offense, was a victim of trafficking of persons, § 5-18-103.

(2) If a determination under subdivision (d)(1) of this section is made that the minor was a victim of trafficking of persons, § 5-18-103, the law enforcement agency investigating the offense shall immediately notify the prosecuting attorney.

(e) In addition to any other sentence authorized by this section, a person who violates this section by offering to pay, agreeing to pay, or paying a fee to engage in sexual activity upon conviction shall be ordered to pay a fine of two hundred fifty dollars ($250) to be deposited into the Safe Harbor Fund for Sexually Exploited Children.

History. Acts 1975, No. 280, § 3002; 1981, No. 816, § 1; 1983, No. 414, § 1; A.S.A. 1947, § 41-3002; Acts 2013, No. 132, § 4; 2013, No. 133, § 4; 2013, No. 1257, § 5; 2019, No. 1020, § 1.

Amendments. The 2019 amendment rewrote (c), added (d), and redesignated former (d) as (e).

5-70-103. Sexual solicitation.

(a) A person commits the offense of sexual solicitation if he or she:

(1) Offers or agrees to pay a fee to a person to engage in sexual activity with him or her or another person; or

(2) Solicits or requests a person to engage in sexual activity with him or her in return for a fee.

(b) Sexual solicitation is an unclassified misdemeanor with the following sentences:

(1) For a first offense:

(A) No more than ninety (90) days' imprisonment;

(B) A fine of no more than two thousand dollars ($2,000); or

(C) Both imprisonment and a fine; and

(2) For a second or subsequent offense:

(A) No more than one (1) year of imprisonment;

(B) A fine of no more than three thousand five hundred dollars ($3,500); or

(C) Both imprisonment and a fine.

(c) It is an affirmative defense to prosecution under this section that the person engaged in an act of sexual solicitation as a result of being a victim of trafficking of persons, § 5-18-103.

(d) In addition to any other sentence authorized by this section, a person who violates this section by offering to pay, agreeing to pay, or paying a fee to engage in sexual activity upon conviction shall be ordered to pay a fine of two hundred fifty dollars ($250) to be deposited into the Safe Harbor Fund for Sexually Exploited Children.

History. Acts 1975, No. 280, § 3003; A.S.A. 1947, § 41-3003; Acts 1999, No. 591, § 1; 2009, No. 428, § 1; 2013, No. 132, § 5; 2013, No. 133, § 5; 2013, No. 1157, § 4; 2013, No. 1257, § 6; 2017, No. 765, § 2.

Amendments. The 2017 amendment rewrote (b).

CHAPTER 71

RIOTS, DISORDERLY CONDUCT, ETC.

SUBCHAPTER.

1. General Provisions.
2. Offenses Generally.

Subchapter 1 — General Provisions

SECTION.

5-71-101. Definitions.

5-71-101. Definitions.

As used in this chapter:

(1) "Alcoholic beverage" means:

(A) Beer, ale, porter, stout, sake, or other similar fermented beverage of any name or description containing five-tenths percent (0.5%) or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any malt substitute;

(B) Wine of not less than five-tenths percent (0.5%) of alcohol by volume; or

(C) A distilled spirit known as "ethyl alcohol", "ethanol", or "spirits of wine" in any form, including all dilutions and mixtures of a distilled spirit, from whatever source or by whatever process produced;

(2) "Deviate sexual activity" means any act of sexual gratification involving:

(A) The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or

(B) The penetration, however slight, of the vagina or anus of one (1) person by any body member or foreign instrument manipulated by another person;

(3) "Governmental function" means any activity that a public servant is legally authorized to undertake on behalf of any governmental unit he or she serves;

(4)(A) "Motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on a public highway.

(B) "Motor vehicle" does not include a vehicle operated solely on a rail or rails;

(5) "Occupiable structure" means a vehicle, building, or other structure:

(A) Where any person lives or carries on a business or other calling;

(B) Where people assemble for purposes of business, government, education, religion, entertainment, or public transportation; or

(C)(i) That is customarily used for overnight accommodation of persons, whether or not a person is actually present.

(ii) Each unit of an occupiable structure divided into separately occupied units is itself an occupiable structure;

(6) "Open alcoholic beverage container" means a bottle, can, or other receptacle that:

(A) Contains any amount of alcoholic beverage; and

(B) Is either:

(i) Open or has a broken seal; or

(ii) Not open or having a broken seal but with its contents already partially removed;

(7) "Property" means real property or tangible or intangible personal property, including money or any paper or document that represents or embodies anything of value;

(8) "Prostitution" has the meaning specified in § 5-70-102;

(9) "Public building" means a structure owned, operated, or occupied by any agency of the State of Arkansas or its political subdivisions or by any agency of the United States Government;

(10) "Public place" means a publicly or privately owned place to which the public or a substantial number of people have access;

(11) "Vehicle" means any craft or device designed for the transportation of people or property across land or water or through the air; and

(12) "Vital public facility" means a facility maintained for use for:

(A) Public communications;

(B) Transportation;

(C) Supply of water, gas, or power;

(D) Law enforcement;

(E) Fire protection;

(F) Civil or national defense; or

(G) Other public service.

History. Acts 1975, No. 280, § 2901; A.S.A. 1947, § 41-2901; Acts 2018 (2nd Ex. Sess.), No. 4, § 1; 2018 (2nd Ex. Sess.), No. 7, § 1.

Amendments. The 2018 (2nd Ex. Sess.) amendment by identical acts Nos. 4 and 7 added the definitions for "Alcoholic beverage", "Motor vehicle", and "Open alcoholic beverage container".

Subchapter 2 — Offenses Generally

SECTION.
5-71-201. Riot.
5-71-202. Aggravated riot.
5-71-203. Inciting riot.
5-71-208. Harassment.
5-71-209. Harassing communications.
5-71-212. Public intoxication — Drinking in public.
5-71-213. Loitering.
5-71-214. Obstructing a highway or other public passage.
5-71-215. Defacing or damaging a public building or an object of public respect.
5-71-218. Possession of open container containing alcohol in a motor vehicle.
5-71-219. Unlawful use and transport of medical marijuana.
5-71-229. Stalking.

5-71-201. Riot.

(a) A person commits the offense of riot if, with two (2) or more other persons, he or she knowingly engages in tumultuous or violent conduct that creates a substantial risk of:

(1) Causing public alarm;

(2) Disrupting the performance of a governmental function; or

(3) Damaging or injuring property or a person.

(b)(1) Riot is a Class A misdemeanor.

(2) A person convicted of riot shall be sentenced to a minimum of thirty (30) days of imprisonment for which the defendant is required to serve at least thirty (30) days before being released from imprisonment and shall be ordered to pay restitution for any physical injury, damage, or loss incurred as a result of the offense.

History. Acts 1975, No. 280, § 2902; A.S.A. 1947, § 41-2902; Acts 2021, No. 1014, § 7.

Amendments. The 2021 amendment added (b)(2).

5-71-202. Aggravated riot.

(a) A person commits the offense of aggravated riot if he or she commits the offense of riot when:

(1) The person knowingly possesses a deadly weapon; or

(2) The person knows that another person with whom he or she is acting possesses a deadly weapon.

(b)(1) Aggravated riot is a Class D felony.

(2) A person convicted of aggravated riot shall be sentenced to a minimum of forty-five (45) days' imprisonment and shall be ordered to

pay restitution for any physical injury, damage, or loss incurred as a result of the offense.

History. Acts 1975, No. 280, § 2903; A.S.A. 1947, § 41-2903; Acts 2007, No. 827, § 92; 2021, No. 1014, § 8.

Amendments. The 2021 amendment added (b)(2).

5-71-203. Inciting riot.

(a) A person commits the offense of inciting riot if he or she knowingly:

(1) By speech or conduct urges others to participate in a riot under circumstances that produce a clear and present danger that they will participate in a riot; or

(2) Gives commands, instructions, or signals to others in furtherance of a riot.

(b)(1) Inciting riot is a Class D felony if physical injury to a person or damage to property results from the offense.

(2)(A) Otherwise, inciting riot is a Class A misdemeanor.

(B) In addition to any other sentence imposed under this section, a person convicted of inciting riot shall be ordered to pay restitution for any physical injury, damage, or loss incurred as a result of the offense.

History. Acts 1975, No. 280, § 2904; A.S.A. 1947, § 41-2904; Acts 2021, No. 1014, § 9.

Amendments. The 2021 amendment inserted "physical" in (b)(1); and added (b)(2)(B).

5-71-207. Disorderly conduct.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Morgan Craven, Paula Johnson, & Terrence Wilson, Eradicating the School-to-Prison Pipeline Through a Comprehensive Approach to School Equity, 42 U. Ark. Little Rock L. Rev. 703 (2020).

CASE NOTES

Analysis

Constitutionality.
Unreasonable or Excessive Noise.

Constitutionality.

Disorderly conduct statute was not impermissibly vague because it contained a mens rea requirement using terms defined in § 5-2-202, and "obstructing" and "unreasonably" were widely understood restrictions; it was not overbroad as it was a content-neutral time, place, or manner restriction justified without reference to the content of the speech, government had a substantial interest in preventing excessive noise and ensuring orderly flow of traffic, and it was sufficiently narrowly tailored. Duhe v. City of Little Rock, 902 F.3d 858 (8th Cir. 2018), cert. denied, 139 S. Ct. 1178, 203 L. Ed. 2d 200 (2019).

Unreasonable or Excessive Noise.

After plaintiff yelled a two-word expletive at the trooper from a moving vehicle, the trooper lacked even arguable probable cause for a disorderly conduct arrest under subdivision (a)(2) of this section ("unreasonable or excessive noise") and thus violated plaintiff's Fourth Amendment right to be free from unreasonable seizure; cases where shouting was part of the

scenario that resulted in a finding of disorderly conduct involved extended loud shouting and disruptive behavior or amplified sound, and in no case has a two-word unamplified outburst constituted disorderly conduct. Thurairajah v. City of Fort Smith, 925 F.3d 979 (8th Cir. 2019).

5-71-208. Harassment.

(a) A person commits the offense of harassment if, with purpose to harass, annoy, or alarm another person, without good cause, he or she:

(1) Strikes, shoves, kicks, or otherwise touches a person, subjects that person to offensive physical contact or attempts or threatens to do so;

(2) In a public place, directs obscene language or makes an obscene gesture to or at another person in a manner likely to provoke a violent or disorderly response;

(3) Follows a person in or about a public place;

(4) In a public place repeatedly insults, taunts, or challenges another person in a manner likely to provoke a violent or disorderly response;

(5) Engages in conduct or repeatedly commits an act that alarms or seriously annoys another person and that serves no legitimate purpose; or

(6) Places a person under surveillance by remaining present outside that person's school, place of employment, vehicle, other place occupied by that person, or residence, other than the residence of the defendant, for no purpose other than to harass, alarm, or annoy.

(b) Harassment is a Class A misdemeanor.

(c) It is an affirmative defense to prosecution under this section if the actor is a law enforcement officer, licensed private investigator, attorney, process server, licensed bail bondsman, or a store detective acting within the reasonable scope of his or her duty while conducting surveillance on an official work assignment.

(d)(1) Upon pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(2) This no contact order remains in effect during the pendency of any appeal of a conviction under this section.

(3) The judicial officer or prosecuting attorney shall provide a copy of this no contact order to the victim and arresting agency without unnecessary delay.

(e) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

History. Acts 1975, No. 280, § 2909; 1985, No. 711, § 1; A.S.A. 1947, § 41-2909; Acts 1993, No. 379, § 5; 1993, No. 388, § 5; 1995, No. 1302, § 3; 2017, No. 472, § 20.

Amendments. The 2017 amendment,

in (e), substituted "case" for "cause" and "orders consistent with § 5-2-327 or § 5-2-328, or both" for "such orders as are consistent with § 5-2-305".

CASE NOTES

Analysis

Evidence.
Preservation for Review.

Evidence.

Evidence was sufficient to support defendant's harassment conviction where the victim testified that defendant had grabbed her breast and she was upset about it, another witness testified that the victim was upset, and the jury was entitled to believe that testimony over defendant's self-serving testimony that he had meant no offense by touching the victim's breast. Rose v. State, 2018 Ark. App. 446, 558 S.W.3d 415 (2018).

Preservation for Review.

Challenge to the sufficiency of the evidence supporting a juvenile delinquency adjudication was not preserved for review where the dismissal motion did not address subdivision (a)(4) of this section, which was referenced in the State's petition, and defense counsel argued below that defendant had not committed harassment pursuant to subdivision (a)(1) or (a)(2) of this section, but counsel did not argue any deficiency with respect to the elements of either of those subdivisions or subdivision (a)(4). K.O. v. State, 2019 Ark. App. 5, 569 S.W.3d 344 (2019).

5-71-209. Harassing communications.

(a) As used in this section, "electronic device" includes a computer, cell phone, tablet, smartphone, or any other device that connects to the internet or is used in the electronic transmission of communication or information.

(b) A person commits the offense of harassing communications if:

(1) With the purpose to harass, annoy, or alarm another person, the person:

(A) Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, email, message delivered to an electronic device, or any other form of written or electronic communication, in a manner likely to harass, annoy, or cause alarm;

(B) Makes a telephone call or causes a telephone to ring repeatedly, with no purpose of legitimate communication, regardless of whether a conversation ensues;

(C) Knowingly permits any telephone or electronic device under his or her control to be used for any purpose prohibited by this section;

(D) Threatens by telephone, in writing, or by electronic communication, including without limitation by text message, social media post, facsimile transmission, email, and internet service, to take an action against another person that is known by the person to be unlawful; or

(E) Places two (2) or more telephone calls anonymously, at an hour or hours known by the person to be inconvenient to another person, in an offensively repetitious manner or without a legitimate purpose of communication, and by this action knowingly annoys or alarms the other person; or

(2) With the purpose to frighten, intimidate, or distress emotionally another person, the person:

(A) Communicates by telephone to another person that a person has been injured, killed, or is ill when the communication is known by the person to be false; or

(B) Communicates with another person by any method described in subdivision (b)(1) of this section, without legitimate purpose in a manner the person knows, or reasonably should know, would frighten, intimidate, or cause emotional distress to a similarly situated person of reasonable sensibilities.

(c) An offense involving use of a telephone or electronic device may be prosecuted in the county where the defendant was located when he or she used the telephone or electronic device, or in the county where the telephone made to ring by the defendant or the electronic device that received a message or email from the defendant was located.

(d) Harassing communications is a Class A misdemeanor.

(e)(1) Upon the pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rule 9.3 and Rule 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(2) The no contact order under subdivision (e)(1) of this section remains in effect during the pendency of any appeal of a conviction under this section.

(3) The judicial officer or prosecuting attorney shall provide a copy of the no contact order under subdivision (e)(1) of this section to the victim and arresting agency without unnecessary delay.

(f) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

History. Acts 1975, No. 280, § 2910; A.S.A. 1947, § 41-2910; Acts 1993, No. 379, § 6; 1993, No. 388, § 6; 1995, No. 1302, § 4; 2017, No. 130, § 1; 2017, No. 472, § 21; 2019, No. 1049, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207(b), subsection (f) of this section is set out as amended by Acts 2017, No. 472, § 21. Acts 2017, No. 130, § 1, amended subsection (f) of this section to read: "(f) If a judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in a prosecution under this section, the judicial officer shall enter such orders as are consistent with § 5-2-305."

Amendments. The 2017 amendment by No. 130 added (a) and redesignated the remaining subsections accordingly; inserted "or electronic device" throughout the section; in (b)(1), inserted "email, message delivered to an electronic device" and "or electronic"; inserted "or the electronic device that received a message or email from the defendant" in (c); inserted "under subdivision (e)(1) of this section" in (e)(2) and (3); in (f), substituted "a" for "the" preceding "judicial officer" and "a prosecution under this section" for "the cause"; and made stylistic changes.

The 2017 amendment by No. 472, in (e) [now (f)], substituted "case" for "cause" and "orders consistent with § 5-2-327 or § 5-2-328, or both" for "such orders as are consistent with § 5-2-305".

The 2019 amendment redesignated existing provisions of (b) as (b)(1); added (b)(1)(D) and (E); added (b)(2); and made stylistic changes.

5-71-212. Public intoxication — Drinking in public.

(a) A person commits the offense of public intoxication if he or she appears in a public place manifestly under the influence of alcohol or a controlled substance to the degree and under circumstances such that:

(1) The person is likely to endanger himself or herself or another person or property; or

(2) The person unreasonably annoys a person in his or her vicinity.

(b)(1) Public intoxication is a Class C misdemeanor.

(2)(A) However, public intoxication is an unclassified misdemeanor if the person has been convicted of public intoxication two (2) or more times within five (5) years of the date of the current offense.

(B) In addition to a maximum fine of five hundred dollars ($500), a person convicted of public intoxication under subdivision (b)(2)(A) of this section may be sentenced to:

(i) Probation not to exceed one (1) year, with a condition that the defendant enroll in a program of treatment or counseling for alcohol abuse or alcohol dependency. A term of imprisonment imposed for a revocation of probation under this subdivision (b)(2)(B)(i) shall not exceed thirty (30) days; and

(ii) A term of imprisonment not to exceed thirty (30) days, with an additional probationary period that includes as a condition of probation that the defendant enroll in a program of treatment or counseling for alcohol abuse or alcohol dependency, with the total time of imprisonment and probation not to exceed one (1) year. A term of imprisonment imposed for a revocation of probation under this subdivision (b)(2)(B)(ii) shall not exceed thirty (30) days.

(c) A person commits the offense of drinking in public if the person, other than in a place of business licensed to sell alcoholic beverages for consumption on the premises, consumes any alcoholic beverage:

(1) In any public place;

(2) On any highway or street;

(3) Upon any passenger coach, streetcar, or in or upon any vehicle commonly used for the transportation of passengers; or

(4) In or about any depot, platform, waiting station or room, or other public place.

(d) Drinking in public is a Class C misdemeanor.

(e) This section does not prohibit or restrict the consumption of an alcoholic beverage when consumed:

(1) As a part of a recognized religious ceremony or ritual; or

(2) Within the physical boundaries of a designated entertainment district as defined in § 14-54-1412.

History. Acts 1975, No. 280, § 2913; 1975 (Extended Sess. 1976), No. 1155, §§ 1, 2; A.S.A. 1947, §§ 41-2913, 41-2913.1; reen. Acts 1987, No. 877, § 1; 2019, No. 781, § 2; 2019, No. 812, § 2; 2021, No. 466, § 5.

A.C.R.C. Notes. Acts 2019, No. 781, § 1, provided: "Legislative intent.

"(a) It is the intent of the General Assembly to increase the available penalty for repeat offenders of the offense of public intoxication, not to necessarily punish those persons who may have demonstrated a problem with or a dependency on

alcohol, but to provide the judiciary with a longer time frame during which a sentencing court may sentence a person to probation or a diversionary program and during which the person may be ordered to seek treatment for an alcohol problem or alcohol dependency.

"(b) The General Assembly further intends that this act not be used to unnecessarily fine or incarcerate a person with a demonstrated alcohol problem or alcohol dependency who is not committing any other criminal act when he or she commits the offense of public intoxication and that sentencing courts use discretion and consider alternative sanctions or available probationary or diversionary programs when sentencing repeat offenders under this act."

Amendments. The 2019 amendment by No. 781 added (b)(2) and redesignated former (b) as (b)(1); and substituted "This section does not" for "The provisions of this section shall not be construed to" in (e).

The 2019 amendment by No. 812 added (b)(2) and redesignated former (b) as (b)(1); redesignated part of (e) as (e)(1); substituted "This section does not" for "The provisions of this section shall not be construed to" in the introductory language of (e); added (e)(2); and made a stylistic change.

The 2021 amendment added "However" in (b)(2)(A); and rewrote (b)(2)(B).

5-71-213. Loitering.

(a) A person commits the offense of loitering if he or she:

(1) Lingers, remains, or prowls in a public place or the premises of another person without apparent reason and under circumstances that warrant alarm or concern for the safety of persons or property in the vicinity and, upon inquiry by a law enforcement officer, refuses to identify himself or herself and give a reasonably credible account of his or her presence and purpose;

(2) Lingers, remains, or prowls in or near a school building, not having any reason or relationship involving custody of or responsibility for a student and not having written permission from anyone authorized to grant permission;

(3) Lingers or remains on a sidewalk, roadway, or public right-of-way, in a public parking lot or public transportation vehicle or facility, or on private property, for the purpose of asking for anything as charity or a gift:

(A) In a harassing or threatening manner;

(B) In a way likely to cause alarm to another person; or

(C) Under circumstances that create a traffic hazard or impediment;

(4) Lingers or remains in a public place for the purpose of unlawful gambling;

(5) Lingers or remains in a public place for the purpose of engaging or soliciting another person to engage in prostitution or deviate sexual activity;

(6) Lingers or remains in a public place for the purpose of unlawfully buying, distributing, or using a controlled substance;

(7) Lingers or remains in a public place for the purpose of unlawfully buying, distributing, or consuming an alcoholic beverage;

(8) Lingers or remains on or about the premises of another person for the purpose of spying upon or invading the privacy of another person; or

(9) Lingers or remains on or about the premises of any off-site customer-bank communication terminal without any legitimate purpose.

(b) Among the circumstances that may be considered in determining whether a person is loitering are that the person:

(1) Takes flight upon the appearance of a law enforcement officer;

(2) Refuses to identify himself or herself;

(3) Manifestly endeavors to conceal himself or herself or any object; or

(4) Has acted in a harassing or threatening manner or in a way likely to cause alarm to another person after sunset or before sunrise.

(c) Unless flight by the actor or another circumstance makes it impracticable, prior to an arrest for an offense under subdivision (a)(1) of this section a law enforcement officer shall afford the actor an opportunity to dispel any alarm that would otherwise be warranted by requesting the actor to identify himself or herself and explain his or her presence and conduct.

(d) It is a defense to a prosecution under subdivision (a)(1) of this section if:

(1) The law enforcement officer did not afford the defendant an opportunity to identify himself or herself and explain his or her presence and conduct; or

(2) It appears at trial that an explanation given by the defendant to the law enforcement officer was true and, if believed by the law enforcement officer at that time, would have dispelled the alarm.

(e) Loitering is a Class C misdemeanor.

History. Acts 1975, No. 280, § 2914; A.S.A. 1947, § 41-2914; Acts 1995, No. 557, § 1; 1995, No. 1107, § 1; 2017, No. 847, § 1; 2019, No. 380, § 2.

Amendments. The 2017 amendment rewrote (a)(3); and added (b)(4).

The 2019 amendment inserted "person" in (a)(1) and twice in (a)(8); and substituted "another" for "the other" in (a)(3)(B) and (b)(4).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Amie Alexander & Sarah Giammo, Survey of Legislation 2017: Arkansas General Assembly, 40 U. Ark. Little Rock L. Rev. 305 (2017).

CASE NOTES

Constitutionality.

Subdivision (a)(3) of this section is a content-based restriction of constitutionally-protected speech as it restricts only a certain species of speech (asking for gifts or charity); therefore, strict scrutiny applies. Rodgers v. Bryant, 301 F. Supp. 3d 928 (E.D. Ark. 2017).

The State's asserted compelling interest for subdivision (a)(3) of this section — public safety and motor vehicle safety — is addressed by other laws (e.g., criminal trespass; harassment; assault; stopping, standing, or parking prohibited in specified places; highway solicitation; coercion; disorderly conduct; obstructing a highway or other public passage; soliciting rides prohibited; and impeding flow of traffic); also, nothing in the record suggests that a wide variety of other speech would be less

likely than begging to cause a traffic hazard or impediment. Rodgers v. Bryant, 301 F. Supp. 3d 928 (E.D. Ark. 2017).

Subdivision (a)(3) of this section is a content-based restriction on speech that is not narrowly tailored to promote a compelling governmental interest; therefore, plaintiffs' motion for preliminary injunction against enforcement of subdivision (a)(3) was granted. Rodgers v. Bryant, 301 F. Supp. 3d 928 (E.D. Ark. 2017).

Statewide preliminary injunction was properly granted on a First Amendment challenge to subdivision (a)(3) of this section concerning the offense of loitering because beggars sufficiently alleged an injury-in-fact for standing purposes where there was a credible threat of prosecution; strict scrutiny applied; and, even if the state's interest in public safety through the prevention of aggressive conduct and traffic hazards was "compelling", the state did not show that the law was narrowly tailored to achieve that interest. Rodgers v. Bryant, 942 F.3d 451 (8th Cir. 2019).

5-71-214. Obstructing a highway or other public passage.

(a) A person commits the offense of obstructing a highway or other public passage if, having no legal privilege to do so and acting alone or with another person, he or she renders any highway or other public passage impassable to pedestrian or vehicular traffic.

(b) It is a defense to a prosecution under this section that:

(1) The highway or other public passage was rendered impassable solely because of a gathering of persons to hear the defendant speak or otherwise communicate;

(2) The defendant was a member of a gathering contemplated by subdivision (b)(1) of this section; or

(3) The highway or public passage obstructed has not been established as a city street, county road, or state or federal highway under the laws of this state and no civil court has established a right of passage by prescription for the highway or public passage.

(c) Obstructing a highway or other public passage is a Class A misdemeanor.

History. Acts 1975, No. 280, § 2915; A.S.A. 1947, § 41-2915; Acts 1999, No. 1105, § 1; 2021, No. 1014, § 10.

Amendments. The 2021 amendment substituted "Class A" for "Class C" in (c).

5-71-215. Defacing or damaging a public building or an object of public respect.

(a) A person commits the offense of defacing or damaging a public building or an object of public respect if he or she purposely:

(1) Defaces, mars, vandalizes, destroys, or otherwise damages the State Capitol Building, any building on the State Capitol grounds, any building on the Capitol Mall, any building on the grounds of the Governor's Mansion, or any publicly owned monument, statue, fixture, or landscape on the State Capitol grounds, Capitol Mall, or Governor's Mansion;

(2) Defaces, mars, vandalizes, destroys, or otherwise damages any public monument;

(3) Defaces, mars, vandalizes, destroys, or otherwise damages a work of art on display in any public place;

(4) Defaces, mars, desecrates, vandalizes, destroys, or otherwise damages any place of worship, cemetery, or burial monument; or

(5) Removes a broken or unbroken, commercial or rock, grave marker for any reason except for cleaning or repair by a family member, caretaker, or preservation organization.

(b)(1)(A) Except as provided in subdivision (b)(1)(B) of this section, defacing or damaging a public building or an object of public respect is a Class A misdemeanor if the value of repairing or replacing the public building or damaged object does not exceed five hundred dollars ($500).

(B) Defacing or damaging a public building or an object of public respect is a Class D felony if the value of repairing or replacing the public building or damaged object does not exceed five hundred dollars ($500) and if the object that is defaced, marred, desecrated, vandalized, destroyed, or otherwise damaged is a cemetery or burial monument.

(2)(A) Except as provided in subdivision (b)(2)(B) of this section, defacing or damaging a public building or an object of public respect is a Class D felony if the value of repairing or replacing the public building or damaged object exceeds five hundred dollars ($500), but does not exceed two thousand five hundred dollars ($2,500).

(B) Defacing or damaging a public building or an object of public respect is a Class C felony if the value of repairing or replacing the public building or damaged object exceeds five hundred dollars ($500) but does not exceed two thousand five hundred dollars ($2,500) and if the public building or object that is defaced, marred, desecrated, vandalized, destroyed, or otherwise damaged is a cemetery or burial monument.

(3)(A) Except as provided in subdivision (b)(3)(B) of this section, defacing or damaging a public building or an object of public respect is a Class C felony if the value of repairing or replacing the public building or damaged object exceeds two thousand five hundred dollars ($2,500).

(B) Defacing or damaging a public building or an object of public respect is a Class B felony if the value of repairing or replacing the public building or damaged object exceeds two thousand five hundred dollars ($2,500) and if the public building or object that is defaced, marred, desecrated, vandalized, destroyed, or otherwise damaged is a cemetery or burial monument.

(c) As used in this section, "publicly owned monument" means an object on public land that commemorates a person or persons or an event that has become relevant to a social group as a part of the social group's remembrance of historic times or is part of the social group's cultural heritage due to the object's artistic, historic, social, political, technical, or architectural importance.

History. Acts 1975, No. 280, § 2916; A.S.A. 1947, § 41-2916; Acts 1993, No. 169, § 1; 2005, No. 2232, § 4; 2007, No. 266, § 1; 2021, No. 713, § 1.

Amendments. The 2021 amendment substituted "defacing or damaging a public building or an object of public respect" for "defacing objects of public respect" in the introductory language of (a) and made similar changes throughout the section and in the section heading; added (a)(1), and redesignated the remaining subdivisions of (a) accordingly; inserted "vandalizes, destroys" in (a)(2)-(4) and made similar changes throughout the section; and added (c).

5-71-217. Cyberbullying.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State and Municipal Criminal and Civil Cyberbullying Laws. 26 A.L.R.7th Art. 4 (2017).

Ark. L. Rev. S. Cal Rose, Legislative Note: From LOL to Three Months in Jail: Examining the Validity and Constitutional Boundaries of the Arkansas Cyberbullying Act of 2011, 65 Ark. L. Rev. 1001 (2012).

5-71-218. Possession of open container containing alcohol in a motor vehicle.

(a) It is unlawful for a person to possess an open alcoholic beverage container within an area of a motor vehicle if the area of the motor vehicle is:

(1) Designated to seat the driver or a passenger in the motor vehicle; or

(2) Readily accessible to the driver or a passenger in the motor vehicle while in a seated position and the motor vehicle is located on a public highway or the right-of-way of a public highway.

(b) It is not an offense under this section if the open alcoholic beverage container is possessed:

(1) Outside of the passenger area of the motor vehicle or other area of the motor vehicle commonly used for the transportation of passengers, such as in the trunk or cargo area of the motor vehicle;

(2) In a locked area of the motor vehicle, including without limitation a glove compartment or center console of the motor vehicle;

(3) Behind the last upright seat or in an area not normally occupied by the driver or a passenger, in a motor vehicle that is not equipped with a trunk; or

(4) By a passenger in the motor vehicle, but not the driver, as long as the open alcoholic beverage container is possessed within the living quarters of the motor vehicle or the area of the motor vehicle that is designated for passengers only, the open alcoholic beverage container is not readily accessible to the driver of the motor vehicle, and the motor vehicle is:

(A) Designed, maintained, or used primarily for the transportation of persons for compensation; or

(B) A recreational vehicle, motor home, or house trailer.

(c) A violation of this section is a Class C misdemeanor.

History. Acts 2017, No. 849, § 1; 2018 (2nd Ex. Sess.), No. 4, § 2; 2018 (2nd Ex. Sess.), No. 7, § 2.

Amendments. The 2018 (2nd Ex. Sess.) amendment by identical acts Nos. 4 and 7 substituted "if the area of the motor vehicle" for "that" in the introductory language of (a); deleted "and the motor vehicle is in operation" following "vehicle" in (a)(1); and rewrote (b)(3).

5-71-219. Unlawful use and transport of medical marijuana.

(a) As used in this section:

(1) "Cultivation facility" means the same as defined in the Arkansas Medical Marijuana Amendment of 2016, Arkansas Constitution, Amendment 98;

(2) "Dispensary" means the same as defined in the Arkansas Medical Marijuana Amendment of 2016, Arkansas Constitution, Amendment 98;

(3) "Medical marijuana" means marijuana lawfully possessed, transported, or used for a medical use under state law; and

(4) "Medical use" means the same as defined in the Arkansas Medical Marijuana Amendment of 2016, Arkansas Constitution, Amendment 98.

(b) It is unlawful for a person to knowingly:

(1) Use medical marijuana through inhalation in a place prohibited under the Arkansas Medical Marijuana Amendment of 2016, Arkansas Constitution, Amendment 98;

(2) Transport medical marijuana in an amount greater than five ounces (5 oz.) unless the person is a licensed transporter, is employed by a cultivation facility or dispensary licensed by the Medical Marijuana Commission, and is in possession of a valid registration identification card issued by the Alcoholic Beverage Control Division; or

(3) Transport medical marijuana from another state into Arkansas.

(c) A violation of this section is a Class C misdemeanor.

History. Acts 2021, No. 1062, § 1.

Cross References. Medical Marijuana, § 20-56-301 et seq.

5-71-229. Stalking.

(a)(1) A person commits stalking in the first degree if he or she knowingly engages in a course of conduct that would place a reasonable person in the victim's position under emotional distress and in fear for his or her safety or a third person's safety, and the actor:

(A) Does so in contravention of an order of protection consistent with the Domestic Abuse Act of 1991, § 9-15-101 et seq., or a no contact order as set out in subdivision (a)(2)(A) of this section, protecting the same victim, or any other order issued by any court protecting the same victim;

(B) Has been convicted within the previous ten (10) years of:

(i) Stalking in the second degree;

(ii) Terroristic threatening, § 5-13-301, or terroristic act, § 5-13-310; or

(iii) Stalking or threats against another person's safety under the statutory provisions of any other state jurisdiction; or

(C) Is armed with a deadly weapon or represents by word or conduct that he or she is armed with a deadly weapon.

(2)(A) Upon pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(B) The no contact order remains in effect during the pendency of any appeal of a conviction under this subsection.

(C) The judicial officer or prosecuting attorney shall provide a copy of the no contact order to the victim and the arresting law enforcement agency without unnecessary delay.

(D) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

(3) Stalking in the first degree is a Class B felony.

(b)(1) A person commits stalking in the second degree if he or she knowingly engages in a course of conduct that harasses another person and makes a terroristic threat with the purpose of placing that person in imminent fear of death or serious bodily injury or placing that person in imminent fear of the death or serious bodily injury of his or her immediate family.

(2)(A) Upon pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(B) The no contact order remains in effect during the pendency of any appeal of a conviction under this subsection.

(C) The judicial officer or prosecuting attorney shall provide a copy of the no contact order to the victim and arresting law enforcement agency without unnecessary delay.

(D) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

(3) Stalking in the second degree is a Class C felony.

(c)(1) A person commits stalking in the third degree if he or she knowingly commits an act that would place a reasonable person in the victim's position under emotional distress and in fear for his or her safety or a third person's safety.

(2)(A) Upon pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(B) The no contact order remains in effect during the pendency of any appeal of a conviction under this subsection.

(C) The judicial officer or prosecuting attorney shall provide a copy of the no contact order to the victim and arresting law enforcement agency without unnecessary delay.

(D) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

(3) Stalking in the third degree is a Class A misdemeanor.

(d) It is an affirmative defense to prosecution under this section if the actor is a law enforcement officer, licensed private investigator, attorney, process server, licensed bail bondsman, or a store detective acting within the reasonable scope of his or her duty while conducting surveillance on an official work assignment.

(e) It is not a defense to a prosecution under this section that the actor was not given actual notice by the victim that the actor's conduct was not wanted.

(f) As used in this section:

(1)(A) "Course of conduct" means a pattern of conduct composed of two (2) or more acts, separated by at least thirty-six (36) hours, but occurring within one (1) year, including without limitation an act in which the actor directly, indirectly, or through a third party by any action, method, device, or means follows, monitors, observes, places under surveillance, threatens, or communicates to or about a person or interferes with a person's property.

(B)(i) "Course of conduct" does not include constitutionally protected activity.

(ii) If the defendant claims that he or she was engaged in a constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence;

(2)(A) "Emotional distress" means significant mental suffering or distress.

(B) "Emotional distress" does not require that the victim sought or received medical or other professional treatment or counseling; and

(3) "Harasses" means an act of harassment as prohibited by § 5-71-208.

History. Acts 1993, No. 379, §§ 1-3; 1993, No. 388, §§ 1-3; 1995, No. 1302, § 1; 2007, No. 827, § 94; 2013, No. 1014, § 1; 2017, No. 472, §§ 22-24; 2021, No. 1085, §§ 1, 2.

Amendments. The 2017 amendment, in (a)(2)(D), (b)(2)(D), and (c)(2)(D), substituted "case" for "cause" and "orders consistent with § 5-2-327 or § 5-2-328, or both" for "such orders as are consistent with § 5-2-305".

The 2021 amendment substituted "Class B" for Class C" in (a)(3); and substituted "Class C" for "Class D" in (b)(3).

RESEARCH REFERENCES

ALR. Validity of State Stalking Statutes. 6 A.L.R.7th Art. 6 (2015).

CHAPTER 73
WEAPONS

SUBCHAPTER.
1. Possession and Use Generally.
3. Concealed Handguns.

Subchapter 1 — Possession and Use Generally

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Effective Dates. Acts 2017, No. 562, § 8: Sept. 1, 2017.

Acts 2017, No. 859, § 10: Sept. 1, 2017.

Acts 2019, No. 472, § 7: Mar. 15, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that public safety is increased when trained law enforcement officers are able to carry their handguns in public even when they are off-duty and that this act is immediately necessary because increasing public safety is one of the most important responsibilities of the General Assembly. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is

declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

5-73-101. Definitions.

As used in this chapter:

(1) "Blasting agent" means any material or mixture consisting of fuel and oxidizer intended for blasting if the finished product as mixed for use or shipment cannot be detonated by means of a No. 8 test blasting cap when unconfined;

(2) "Collegiate athletic event" means a sporting or athletic contest, event, or practice of an individual or team of individuals in which one (1) or more individuals or a team of individuals sponsored by, funded by, represented by, or associated with a public or private university, college, or community college competes against themselves or another individual or team of individuals;

(3) "Contraband" means any explosive material that was used with the knowledge and consent of the owner to facilitate a violation of this subchapter, as well as any explosive material possessed under circumstances prohibited by law;

(4) "Destructive device" means:

(A) Any of the following:

(i) Any explosive, incendiary, or poison gas;

(ii) Bomb;

(iii) Grenade;

(iv) Rocket having a propellant charge of more than four ounces (4 oz.);

(v) Missile having an explosive or incendiary charge of more than one-quarter ounce (.25 oz.);

(vi) Mine; or

(vii) Similar device; and

(B) Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subdivision (4)(A) of this section and from which a destructive device may be readily assembled for use as a weapon;

(5)(A) "Detonator" means any device containing any initiating or primary explosive that is used for initiating detonation.

(B) A detonator may not contain more than ten grams (10g) of total explosives by weight, excluding ignition or delay charges, and may include, without limitation, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating cord delay connectors, and noninstantaneous and delay blasting caps that use detonating cord, shock tube, or any other replacement for electric leg wires;

(6) "Distribute" means to sell, issue, give, transfer, or otherwise dispose of explosive material;

(7)(A) "Explosive" means any chemical compound mixture or device, the primary or common purpose of which is to function by explosion.

(B) "Explosive" includes, without limitation:

(i) Dynamite and any other high explosive;

(ii) Black powder;

(iii) Pellet powder;

(iv) An initiating explosive;

(v) A detonator;

(vi) A safety fuse;

(vii) A squib;

(viii) A detonating cord;

(ix) An igniter cord;

(x) An igniter;

(xi) Any material determined to be within the scope of 18 U.S.C. § 841 et seq.; and

(xii) Any material classified as an explosive other than consumer fireworks, 1.4 (Class C, Common), by the hazardous materials regulations of the United States Department of Transportation;

(8) "Explosive material" means an explosive, blasting agent, or detonator;

(9) "Instrument of crime" means anything manifestly designed, made, adapted, or commonly used for a criminal purpose;

(10) "Journey" means a person has left his or her home or the curtilage of his or her home either on foot, horseback, bicycle, or in an automobile for any purpose or duration;

(11) "Minor" means any person under eighteen (18) years of age;

(12) "Vehicle" means any automobile and is considered an extension of a person's home, with any protections that conveys; and

(13) "Violent felony conviction" means a conviction for any felony offense against the person which is codified in § 5-10-101 et seq., § 5-11-101 et seq., § 5-12-101 et seq., § 5-13-201 et seq., § 5-13-301 et seq., § 5-14-101 et seq., and § 5-14-201 et seq., or any other offense containing as an element of the offense one (1) of the following:

(A) The use of physical force;

(B) The use or threatened use of serious physical force;

(C) The infliction of physical harm; or

(D) The creation of a substantial risk of serious physical harm.

History. Acts 1975, No. 280, § 3101; A.S.A. 1947, § 41-3101; Acts 2001, No. 1430, § 1; 2005, No. 1226, § 1; 2017, No. 859, § 1; 2021, No. 956, § 1.

Amendments. The 2017 amendment added the definition for "Collegiate athletic event".

The 2021 amendment added the definitions for "Journey" and "Vehicle".

Effective Dates. Acts 2017, No. 859, § 10: Sept. 1, 2017.

CASE NOTES

Violent Felony Conviction.

Circuit court properly sentenced defendant as a habitual offender to 12 years' imprisonment for possession of a firearm by certain persons, Class B felony, because defendant's prior federal conviction for aggravated assault qualified as a "prior violent felony conviction" under this section and § 5-73-103; assault with a dangerous weapon in the federal statute, 18 U.S.C. § 113, met the "serious physical force" requirement in subdivision (11)(B) (now (13)(B)) of this section because the threat of bodily impact, restraint, or confinement when committed with a dangerous weapon is a threat of serious force. Seyller v. State, 2019 Ark. App. 423, 586 S.W.3d 685 (2019).

5-73-103. Possession of firearms by certain persons.

(a) Except as provided in subsection (d) of this section or unless authorized by and subject to such conditions as prescribed by the Governor, or his or her designee, or the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives, or other bureau or office designated by the United States Department of Justice, no person shall possess or own any firearm who has been:

(1) Convicted of a felony;

(2) Adjudicated mentally ill; or

(3) Committed involuntarily to any mental institution.

(b)(1) Except as provided in subdivisions (b)(2) and (3) of this section, a determination by a jury or a court that a person committed a felony constitutes a conviction for purposes of subsection (a) of this section even though the court suspended imposition of sentence or placed the defendant on probation.

(2) Subdivision (b)(1) of this section does not apply to a person whose case was dismissed and expunged under § 16-93-301 et seq. or § 16-98-303(g).

(3) The determination by the jury or court that the person committed a felony does not constitute a conviction for purposes of subsection (a) of this section if the person is subsequently granted a pardon explicitly restoring the ability to possess a firearm.

(c)(1) A person who violates this section commits a Class B felony if:

(A) The person has a prior violent felony conviction;

(B) The person's current possession of a firearm involves the commission of another crime; or

(C) The person has been previously convicted under this section or a similar provision from another jurisdiction.

(2) A person who violates this section commits a Class D felony if he or she has been previously convicted of a felony and his or her present conduct or the prior felony conviction does not fall within subdivision (c)(1) of this section.

(3) Otherwise, the person commits a Class A misdemeanor.

(d) The Governor may restore without granting a pardon the right of a convicted felon or an adjudicated delinquent to own and possess a firearm upon the recommendation of the chief law enforcement officer in the jurisdiction in which the person resides, so long as the underlying felony or delinquency adjudication:

(1) Did not involve the use of a weapon; and
(2) Occurred more than eight (8) years ago.

(e) As used in this section, "felony" means any state or federal felony, excluding a federal or state felony offense for which the person convicted has completed his or her sentence and pertaining to:
(1) An antitrust violation;
(2) An unfair trade practice;
(3) Restraint of trade; or
(4) Another offense relating to the regulation of business practices.

History. Acts 1975, No. 280, § 3103; 1977, No. 360, § 18; A.S.A. 1947, § 41-3103; Acts 1987, No. 74, § 1; 1994 (2nd Ex. Sess.), No. 63, § 1; 1995, No. 595, § 1; 1995, No. 1325, § 1; 2001, No. 1429, § 1; 2009, No. 1491, § 1; 2021, No. 631, § 2.

A.C.R.C. Notes. Acts 2021, No. 631, § 1, provided: "Legislative findings. The General Assembly finds that:

"(1) Under 18 U.S.C. 922(g), it is 'unlawful for any person ... who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year ... to ... possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce';

"(2) Under 18 U.S.C. 921(a)(20)(A), the 'term 'crime punishable by imprisonment for a term exceeding one year' does not include ... any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices'; and

"(3) Because the United States Government does not consider offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as disqualifying offenses for the right to lawfully possess a firearm or ammunition, the State of Arkansas shall take a similar position."

Amendments. The 2021 amendment added (e).

CASE NOTES

Analysis

Applicability.
Constructive Possession.
Evidence.
Preservation for Review.
Sentencing.

Applicability.

Specifics of defendant's ex post facto arguments regarding his 2014 charge were not considered as he lacked standing to challenge the constitutionality of the retroactive application of the amendment to this section. Even though defendant completed his earlier probation, he failed to fulfill the terms and conditions of the probation by using marijuana, and as a result his 1995 disposition was not expunged; and the amendment to subsection (b) did not apply to offenders whose cases were not dismissed and expunged. Kimbrell v. State, 2017 Ark. App. 555, 533 S.W.3d 114 (2017).

Constructive Possession.

Motion for a directed verdict was properly denied because the State presented sufficient evidence that defendant constructively possessed a firearm; although there was joint occupancy of a vehicle, the State presented other evidence linking defendant to the gun. The gun was found in the backseat, where defendant was the sole passenger, the compartment where the gun was found was immediately and exclusively accessible to defendant, and defendant behaved suspiciously before and during the traffic stop. Lambert v. State, 2017 Ark. 31, 509 S.W.3d 637 (2017).

State did not sufficiently prove that defendant constructively possessed a semi-automatic 9-mm pistol because defendant was not particularly close to the gun when he was arrested, and multiple people had access to the backyard and the shed areas where the gun was found; the State presented no forensic evidence, like

a fingerprint analysis, to link him to either the gun or the ammunition. Bradley v. State, 2018 Ark. App. 586, 564 S.W.3d 569 (2018).

Substantial evidence supported defendant's conviction for felon in possession of a firearm where constructive possession could be implied given that the firearm was under the driver's seat, so it was immediately and exclusively accessible by defendant and subject to his control, and the jury was not required to believe defendant's self-serving testimony that he had no knowledge that the firearm was in the vehicle, especially given that the evidence showed that the gun case in which the firearm had been kept was open and empty on the passenger's seat; defendant's mother owned the vehicle, his fiancée testified that it was her gun, and defendant was the sole occupant of the vehicle at the time of arrest. Bens v. State, 2020 Ark. App. 6, 593 S.W.3d 495 (2020).

Circuit court properly sentenced defendant to a total of 24 years in prison after a jury convicted him of being a felon in possession of a firearm because the gun at issue was found under the passenger seat along with socks and a brush, and the jury was not required to believe defendant's self-serving testimony that he had no knowledge that the firearm was in the vehicle, and his cursory argument regarding counsel's understanding of the sentencing statute, § 16-90-120, was insufficient to preserve the issue on appeal. Johnson v. State, 2020 Ark. App. 446, 608 S.W.3d 162 (2020).

There was no meritorious challenge to the trial court's denial of a directed verdict motion as to the felon in possession of a firearm charges where defendant demonstrated control over a gun found in a safe when he gave the officers the combination and advised them of its presence, and he admitted to the police that he had possessed two guns found in the trunk and had put them there. House v. State, 2020 Ark. App. 452, 611 S.W.3d 197 (2020).

Evidence.

Circuit court did not err in denying defendant's motions for directed verdict because there was sufficient evidence to find that defendant, a convicted felon, possessed a firearm; the testimony of two witnesses indicated that defendant brought a gun to a residence where the victim used it to shoot himself. McCormick v. State, 2016 Ark. App. 330 (2016).

Sufficient evidence supported defendant's conviction for being a felon in possession of a firearm as (1) defendant stipulated to a prior felony conviction, (2) a jury could conclude from an undated photo of defendant that defendant possessed a firearm after his brother-in-law moved to the county, (3) the jury could accept the officer's testimony that the firearm in the photo was a rifle, rather than the brother-in-law's testimony that it was a BB gun, and (4) shotgun shells were found in defendant's car. Coger v. State, 2017 Ark. App. 466, 529 S.W.3d 640 (2017).

Evidence was sufficient to convict defendant of possession of a firearm by a felon because another individual's testimony that the gun had been in his possession and he had thrown it on the ground did not explain the gun being found on the ground in front of the officer's patrol car after defendant made a tossing motion in that direction; the other individual was not in the area when the officer drove up and observed defendant tossing something; and the officer more than once on a video stated that he had seen defendant throw something, that he had found the gun on the ground in that area, and that the condition of the gun indicated that it had been thrown on the ground. McNeely v. State, 2017 Ark. App. 483, 530 S.W.3d 876 (2017).

Sufficient evidence supported defendant's conviction under this section for possession of a firearm because (1) a witness said she saw defendant shoot the victim, (2) another witness said defendant approached the victim with a gun, and (3) any inconsistency in testimony went to weight rather than admissibility. Green v. State, 2018 Ark. App. 145, 544 S.W.3d 574 (2018).

In a bench trial resulting in defendant's convictions for possession of a firearm by certain persons and criminal use of prohibited weapons, the evidence before the trial court, though circumstantial, showed that defendant took a picture holding a gun on the same day that he attempted to retrieve an apparently temporarily discarded and illegally cutdown rifle. Accordingly, the appellate court found no error with the circuit court's finding that the State's circumstantial evidence proved its case nor with the circuit court's finding

that the circumstantial evidence was inconsistent with any other reasonable alternative. Caple v. State, 2019 Ark. App. 41, 569 S.W.3d 353 (2019).

State did not present sufficient evidence on which a fact finder could have convicted defendant of being a felon in possession of a firearm. A firearm was never recovered and presented as being one that defendant had possessed, and there was no video or photographic evidence that defendant had possessed a gun. Holmes v. State, 2019 Ark. App. 384, 586 S.W.3d 183 (2019).

Preservation for Review.

Defendant did not challenge the sufficiency of the evidence concerning his conviction under this section in his motion for dismissal as required, and thus his argument was not preserved for review and his conviction was affirmed. Oliver v. State, 2016 Ark. App. 332, 498 S.W.3d 320 (2016).

Defendant's argument that the evidence was insufficient to sustain his conviction for felon in possession of a firearm was preserved for review despite the State's argument concerning defendant's failure to use the word "constructive" in his directed verdict motion at the close of the State's case; the broad term "possession" encompassed the more precise term "constructive possession" because defendant essentially argued constructive possession in his initial directed verdict motion. Bens v. State, 2020 Ark. App. 6, 593 S.W.3d 495 (2020).

Sentencing.

Defendant's 10-year sentence for possession of a firearm by a felon was within the statutory range of punishment for a Class D felony committed by a defendant previously convicted of four or more felonies, and the circuit court's decision to run the sentence consecutively to defendant's other sentence was within the court's discretion. McNeely v. State, 2017 Ark. App. 483, 530 S.W.3d 876 (2017).

Circuit court properly sentenced defendant as a habitual offender to 12 years' imprisonment for possession of a firearm by certain persons, Class B felony, because defendant's prior federal conviction for aggravated assault qualified as a "prior violent felony conviction" under this section and § 5-73-101; assault with a dangerous weapon in the federal statute, 18 U.S.C. § 113, met the "serious physical force" requirement in § 5-73-101(11)(B) because the threat of bodily impact, restraint, or confinement when committed with a dangerous weapon is a threat of serious force. Seyller v. State, 2019 Ark. App. 423, 586 S.W.3d 685 (2019).

Cited: Mosley v. State, 2016 Ark. App. 353, 499 S.W.3d 226 (2016).

5-73-104. Criminal use of prohibited weapons.

(a) A person commits the offense of criminal use of prohibited weapons if, except as authorized by law, he or she knowingly uses, possesses, makes, repairs, sells, or otherwise deals in any:

(1) Bomb;

(2) Metal knuckles; or

(3) Other implement for the infliction of serious physical injury or death that serves no lawful purpose.

(b) This section does not apply if the person uses, possesses, makes, repairs, sells, or otherwise deals in an item described in this section that is in compliance with the National Firearms Act, 26 U.S.C. §§ 5801 — 5861, or other applicable federal law, as either existed on January 1, 2019.

(c) It is a defense to prosecution under this section that:

(1) The defendant was a law enforcement officer, prosecuting attorney, deputy prosecuting attorney, prison guard, or member of the United States Armed Forces acting in the course and scope of his or her duty at the time he or she used or possessed the prohibited weapon; or

(2) The defendant used, possessed, made, repaired, sold, or otherwise dealt in any article enumerated in subsection (a) of this section under circumstances negating any likelihood that the weapon could be used as a weapon.

(d)(1) Criminal use of prohibited weapons is a Class B felony if the weapon is a bomb.

(2) Criminal use of prohibited weapons is a Class A misdemeanor if the offense is possession of metal knuckles.

(3) Otherwise, criminal use of prohibited weapons is a Class D felony.

History. Acts 1975, No. 280, § 3104; A.S.A. 1947, § 41-3104; Acts 1993, No. 1189, § 7; 2005, No. 1994, § 438; 2011, No. 161, § 1; 2013, No. 539, § 1; 2019, No. 495, § 1; 2019, No. 1051, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207(b), this section is set out as amended by Acts 2019, No. 1051, § 1. Acts 2019, No. 495, § 1, amended this section to read as follows:

"(a) A person commits the offense of criminal use of prohibited weapons if, except as authorized by law, he or she knowingly uses, possesses, makes, repairs, sells, or otherwise deals in any:

"(1) Bomb;

"(2) Machine gun;

"(3) Sawed-off shotgun or rifle;

"(4) Metal knuckles; or

"(5) Other implement for the infliction of serious physical injury or death that serves no lawful purpose.

"(b) It is an exception to this section that the person uses, possesses, makes, repairs, sells, or otherwise deals in an item under this section that is in compliance with the National Firearms Act, 26 U.S.C. §§ 5801 — § 5861, or other applicable federal law, as they existed on January 1, 2019.

"(c) It is a defense to prosecution under this section that:

"(1) The defendant was a law enforcement officer, prosecuting attorney, deputy prosecuting attorney, prison guard, or member of the armed forces acting in the course and scope of his or her duty at the time he or she used or possessed the prohibited weapon; or

"(2) The defendant used, possessed, made, repaired, sold, or otherwise dealt in any article enumerated in subsection (a) of this section under circumstances negating any likelihood that the weapon could be used as a weapon.

"(d)(1) Criminal use of prohibited weapons is a Class B felony if the weapon is a bomb or machine gun.

"(2) Criminal use of prohibited weapons is a Class A misdemeanor if the offense is possession of metal knuckles.

"(3) Otherwise, criminal use of prohibited weapons is a Class D felony."

Amendments. The 2019 amendment by No. 495 inserted "knowingly" in the introductory language of (a); deleted former (a)(4) and redesignated former (a)(5) and (a)(6) as (a)(4) and (a)(5); added "that serves no lawful purpose" at the end of (a)(5); inserted (b); redesignated former (b) and (c) as (c) and (d); and deleted "or firearm specially made or specially adapted for silent discharge" from the end of (d)(1).

The 2019 amendment by No. 1051 inserted "knowingly" in the introductory language of (a); deleted former (a)(2) through (a)(4); redesignated former (a)(5) and (a)(6) as (a)(2) and (a)(3); added "that serves no lawful purpose" at the end of present (a)(3); inserted (b); redesignated former (b) and (c) as (c) and (d); substituted "United States Armed Forces" for "armed forces" in (c)(1); and deleted "machine gun, or firearm specially made or specially adapted for silent discharge" from the end of (d)(1).

CASE NOTES

Evidence.

In a case in which defendant was found guilty of possession of a firearm by certain persons and criminal use of prohibited weapons, the evidence before the trial court, though circumstantial, showed that defendant took a picture holding a gun on the same day that he attempted to re-

trieve an apparently temporarily discarded and illegally cutdown rifle. Accordingly, the appellate court found no error with the circuit court's finding that the State's circumstantial evidence proved its case nor did the appellate court find any error with the circuit court's finding that the circumstantial evidence was inconsistent with any other reasonable alternative. Caple v. State, 2019 Ark. App. 41, 569 S.W.3d 353 (2019).

5-73-107. Possession of a defaced firearm.

(a) A person commits the offense of possession of a defaced firearm if he or she knowingly possesses a firearm with a manufacturer's serial number or other identification mark required by law that has been removed, defaced, marred, altered, or destroyed.

(b) It is a defense to a prosecution under this section that:

(1) The person reported the possession to the police or other governmental agency prior to arrest or the issuance of an arrest warrant or summons; or

(2) The firearm was manufactured prior to January 1, 1968.

(c)(1) Possession of a defaced firearm is a Class D felony.

(2) However, possession of a defaced firearm is a Class A misdemeanor if the manufacturer's serial number or other identification mark required by law is merely covered or obstructed, but still retrievable.

History. Acts 1975, No. 280, § 3107; A.S.A. 1947, § 41-3107; Acts 1995, No. 1202, § 1; 2017, No. 73, § 1.

Amendments. The 2017 amendment redesignated part of former (b) as (b)(1); and added (b)(2).

CASE NOTES

Evidence Sufficient.

Sufficient evidence supported defendant's conviction of felony, rather than misdemeanor, possession of a defaced firearm; it was irrelevant that there was another retrievable serial number on the gun because the outer serial number was defaced, it was not "merely covered or obstructed", and furthermore, defendant admitted he possessed a firearm with a defaced outer serial number. Jimmerson v. State, 2019 Ark. App. 578, 590 S.W.3d 764 (2019).

5-73-109. Furnishing a deadly weapon to a minor.

(a) A person commits the offense of furnishing a deadly weapon to a minor if he or she sells, barters, leases, gives, rents, or otherwise furnishes a firearm or other deadly weapon to a minor without the consent of a parent, guardian, or other person responsible for general supervision of the minor's welfare.

(b)(1) Furnishing a deadly weapon to a minor is a Class A misdemeanor.

(2) However, furnishing a deadly weapon to a minor is a Class B felony if the deadly weapon is:

(A) A handgun;

(B) An explosive or incendiary device, as defined in § 5-71-301;

(C) Metal knuckles;

(D) A defaced firearm, as described in § 5-73-107; or

(E) Another implement for the infliction of serious physical injury or death that serves no lawful purpose.

History. Acts 1975, No. 280, § 3109; A.S.A., 1947, § 41-3109; Acts 1994 (2nd Ex. Sess.), No. 45, § 1; 2019, No. 495, § 2; 2019, No. 1051, § 2.

A.C.R.C. Notes. Pursuant to § 1-2-207(b), subsection (b) of this section is set out as amended by Acts 2019, No. 1051, § 2. Acts 2019, No. 495, § 2, amended subsection (b) of this section to read as follows:

"(b)(1) Furnishing a deadly weapon to a minor is a Class A misdemeanor.

"(2) However, furnishing a deadly weapon to a minor is a Class B felony if the deadly weapon is:

"(A) A handgun;

"(B) A sawed-off or short-barrelled shotgun, as defined in § 5-1-102;

"(C) A sawed-off or short-barrelled rifle, as defined in § 5-1-102;

"(D) A machine gun;

"(E) An explosive or incendiary device, as defined in § 5-71-301;

"(F) Metal knuckles;

"(G) A defaced firearm, as defined in § 5-73-107; or

"(H) Another implement for the infliction of serious physical injury or death that serves no lawful purpose."

Amendments. The 2019 amendment by No. 495 deleted former (b)(2)(D) and redesignated the remaining subdivisions accordingly; and deleted "common" preceding "lawful" in (b)(2)(H).

The 2019 amendment by No. 1051 deleted former (b)(2)(B) through (b)(2)(E) and redesignated the remaining subdivisions accordingly; substituted "described" for "defined" in (b)(2)(D); and deleted "common" preceding "lawful" in (b)(2)(E).

5-73-110. Disarming minors and mentally defective or mentally irresponsible persons — Disposition of property seized.

RESEARCH REFERENCES

ALR. Proscription of 18 U.S.C. § 922(g)(3) That Persons Who Are Unlawful Users of or Addicted to Any Controlled Substance Cannot Possess Any Firearm or Ammunition in or Affecting Commerce. 44 A.L.R. Fed. 3d Art. 3 (2019).

5-73-119. Handguns — Possession by minor or possession on school property.

(a)(1) No person in this state under eighteen (18) years of age shall possess a handgun.

(2)(A) A violation of subdivision (a)(1) of this section is a Class A misdemeanor.

(B) A violation of subdivision (a)(1) of this section is a Class D felony if the person has previously:

(i) Been adjudicated delinquent for a violation of subdivision (a)(1) of this section;

(ii) Been adjudicated delinquent for any offense that would be a felony if committed by an adult; or

(iii) Pleaded guilty or nolo contendere to or been found guilty of a felony in circuit court while under eighteen (18) years of age.

(b)(1) No person in this state shall possess a firearm:

(A) Upon the developed property of a public or private school, kindergarten through grade twelve (K-12);

(B) In or upon any school bus; or

(C) At a designated bus stop as identified on the route list published by a school district each year.

(2)(A) A violation of subdivision (b)(1) of this section is a Class D felony.

(B) No sentence imposed for a violation of subdivision (b)(1) of this section shall be suspended or probated or treated as a first offense under § 16-93-301 et seq.

(c)(1) Except as provided in § 5-73-322, a person in this state shall not possess a handgun upon the property of any private institution of higher education or a publicly supported institution of higher education in this state on or about his or her person, in a vehicle occupied by him or her, or otherwise readily available for use with a purpose to employ the handgun as a weapon against a person.

(2) A violation of subdivision (c)(1) of this section is a Class D felony.

(d) "Handgun" means a firearm capable of firing rimfire ammunition or centerfire ammunition and designed or constructed to be fired with one (1) hand.

(e) It is permissible to carry a handgun under this section if at the time of the act of possessing a handgun or firearm:

(1) The person is in his or her own dwelling or place of business or on property in which he or she has a possessory or proprietary interest, except upon the property of a public or private institution of higher learning;

(2) The person is a law enforcement officer, correctional officer, or member of the armed forces acting in the course and scope of his or her official duties;

(3) The person is assisting a law enforcement officer, correctional officer, or member of the armed forces acting in the course and scope of his or her official duties pursuant to the direction or request of the law enforcement officer, correctional officer, or member of the armed forces;

(4) The person is a registered commissioned security guard acting in the course and scope of his or her duties;

(5) The person is hunting game with a handgun or firearm that may be hunted with a handgun or firearm under the rules and regulations of the Arkansas State Game and Fish Commission or is en route to or from a hunting area for the purpose of hunting game with a handgun or firearm;

(6)(A) The person is a certified law enforcement officer, either on-duty or off-duty.

(B) If the person is an off-duty law enforcement officer, he or she may be required by a public school or publicly supported institution of higher education to be in physical possession of a valid identification identifying the person as a law enforcement officer;

(7) The person is on a journey beyond the county in which the person lives, unless the person is eighteen (18) years of age or less;

(8) The person is participating in a certified hunting safety course sponsored by the commission or a firearm safety course recognized and

approved by the commission or by a state or national nonprofit organization qualified and experienced in firearm safety;

(9) The person is participating in a school-approved educational course or sporting activity involving the use of firearms;

(10) The person is a minor engaged in lawful marksmanship competition or practice or other lawful recreational shooting under the supervision of his or her parent, legal guardian, or other person twenty-one (21) years of age or older standing in loco parentis or is traveling to or from a lawful marksmanship competition or practice or other lawful recreational shooting with an unloaded handgun or firearm accompanied by his or her parent, legal guardian, or other person twenty-one (21) years of age or older standing in loco parentis;

(11) The person has a license to carry a concealed handgun under § 5-73-301 et seq. and is carrying a concealed handgun on the developed property of:

(A) A kindergarten through grade twelve (K-12) private school operated by a church or other place of worship that:

(i) Is located on the developed property of the kindergarten through grade twelve (K-12) private school;

(ii) Allows the person to carry a concealed handgun into the church or other place of worship under § 5-73-306; and

(iii) Allows the person to possess a concealed handgun on the developed property of the kindergarten through grade twelve (K-12) private school; or

(B) A kindergarten through grade twelve (K-12) private school or a prekindergarten private school that through its governing board or director has set forth the rules and circumstances under which the licensee may carry a concealed handgun into a building or event of the kindergarten through grade twelve (K-12) private school or the prekindergarten private school; or

(12)(A) The person has a license to carry a concealed handgun under § 5-73-301 et seq. and is carrying a concealed handgun in his or her motor vehicle or has left the concealed handgun in his or her locked and unattended motor vehicle in a publicly owned and maintained parking lot.

(B)(i) As used in this subdivision (e)(12), "parking lot" means a designated area or structure or part of a structure intended for the parking of motor vehicles or a designated drop-off zone for children at a school.

(ii) "Parking lot" does not include a parking lot owned, maintained, or otherwise controlled by the Division of Correction or Division of Community Correction.

History. Acts 1989, No. 649, §§ 1-4; 1993, No. 1166, § 1; 1993, No. 1189, § 4; 1994 (2nd Ex. Sess.), No. 57, § 1; 1994 (2nd Ex. Sess.), No. 58, § 1; 1999, No. 1282, § 1; 2001, No. 592, § 1; 2005, No. 1994, § 476; 2013, No. 226, § 1; 2013, No. 746, § 1; 2013, No. 1390, § 1; 2015, No. 933, § 1; 2015, No. 1078, § 1; 2019, No. 472, § 1; 2019, No. 910, § 679.

A.C.R.C. Notes. Acts 2019, No. 472,

§ 6, provided: "Policy required.

"(a) A state institution shall develop a policy consistent with this act concerning the lawful open or concealed carry of a handgun by an off-duty law enforcement officer at a state institution affected by this act.

"(b) The promulgation of a policy under this section is exempt from the Arkansas Administrative Procedure Act, § 25-15-201 et seq."

Amendments. The 2019 amendment by No. 472 redesignated (e)(6) as (e)(6)(A); added "either on-duty or off-duty" in (e)(6)(A); and added (e)(6)(B).

The 2019 amendment by No. 910 substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" in (e)(12)(B)(ii).

5-73-120. Carrying a weapon.

(a) A person commits the offense of carrying a weapon if he or she possesses a handgun, knife, or club on or about his or her person, in a vehicle occupied by him or her, or otherwise readily available for use with a purpose to attempt to unlawfully employ the handgun, knife, or club as a weapon against a person.

(b) As used in this section:

(1) "Club" means any instrument that is specially designed, made, or adapted for the purpose of inflicting serious physical injury or death by striking, including a blackjack, billie, and sap;

(2) "Handgun" means any firearm with a barrel length of less than twelve inches (12″) that is designed, made, or adapted to be fired with one (1) hand; and

(3) "Knife" means any bladed hand instrument three inches (3″) or longer that is capable of inflicting serious physical injury or death by cutting or stabbing, including a dirk, a sword or spear in a cane, a razor, an ice pick, a throwing star, a switchblade, and a butterfly knife.

(c) It is permissible to carry a weapon under this section if at the time of the act of carrying the weapon:

(1) The person is in his or her own dwelling, in his or her personal vehicle, in his or her place of business, or on property in which he or she has a possessory or proprietary interest;

(2) The person is a law enforcement officer, correctional officer, or member of the armed forces acting in the course and scope of his or her official duties;

(3) The person is assisting a law enforcement officer, correctional officer, or member of the armed forces acting in the course and scope of his or her official duties pursuant to the direction or request of the law enforcement officer, correctional officer, or member of the armed forces;

(4) The person is carrying a weapon when upon a journey, unless the journey is through a commercial airport when presenting at the security checkpoint in the airport or is in the person's checked baggage and is not a lawfully declared weapon;

(5) The person is a registered commissioned security guard acting in the course and scope of his or her duties;

(6) The person is hunting game with a handgun that may be hunted with a handgun under rules and regulations of the Arkansas State

Game and Fish Commission or is en route to or from a hunting area for the purpose of hunting game with a handgun;

(7)(A) The person is a certified law enforcement officer, either on-duty or off-duty.

(B) If the person is an off-duty law enforcement officer, he or she may be required by a public school or publicly supported institution of higher education to be in physical possession of a valid identification identifying the person as a law enforcement officer;

(8) The person is in possession of a concealed handgun and has a valid license to carry a concealed handgun under § 5-73-301 et seq., or recognized under § 5-73-321 and is not in a prohibited place as defined by § 5-73-306;

(9) The person is a prosecuting attorney or deputy prosecuting attorney carrying a firearm under § 16-21-147;

(10) The person is in possession of a handgun and is a retired law enforcement officer with a valid concealed carry authorization issued under federal or state law; or

(11) The person is in possession of a concealed handgun and is a current or former district court judge, circuit court judge, Court of Appeals judge, or Supreme Court justice, with a valid license to carry a concealed handgun under § 5-73-301 et seq.

(d) Carrying a weapon is a Class A misdemeanor.

History. Acts 1975, No. 696, § 1; 1981, No. 813, § 1; A.S.A. 1947, § 41-3151; Acts 1987, No. 266, § 1; 1987, No. 556, § 1; 1987, No. 734, § 1; 1995, No. 832, § 1; 2003, No. 1267, § 2; 2005, No. 1994, § 293; 2013; No. 539, § 2; 2013, No. 746, § 2; 2015, No. 1155, § 14; 2019, No. 472, § 2; 2021, No. 766, § 1; 2021, No. 956, § 2.

A.C.R.C. Notes. Acts 2019, No. 472, § 6, provided: "Policy required.

"(a) A state institution shall develop a policy consistent with this act concerning the lawful open or concealed carry of a handgun by an off-duty law enforcement officer at a state institution affected by this act.

"(b) The promulgation of a policy under this section is exempt from the Arkansas Administrative Procedure Act, § 25-15-201 et seq."

Amendments. The 2019 amendment redesignated (c)(7) as (c)(7)(A); added "either on-duty or off-duty" in (c)(7)(A); and added (c)(7)(B).

The 2021 amendment by No. 766 added (c)(11).

The 2021 amendment by No. 956 deleted former (b)(3) and redesignated former (b)(4) as (b)(3); and substituted "in his or her personal vehicle, in his or her place of business" for "or place of business" in (c)(1).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Laws Allowing or Proscribing Openly Carrying Firearms. 25 A.L.R.7th Art. 5 (2017).

Ark. L. Notes. Michael Kiel Kaiser & Andrew P. Thornton, *Taff v. State*: The Logical Albeit Delayed Conclusion to the Legislature's 2013 Amendments to Arkansas's Carrying-a-Weapon Statute, Ark. L. Notes (Mar. 16, 2020).

Ark. L. Rev. J.H. Berry, Arkansas Open Carry: Understanding Law Enforcement's Legal Capability Under a Difficult Statute, 70 Ark. L. Rev. 139 (2017).

U. Ark. Little Rock L. Rev. Hannah Webb Howard, Note: An Analysis of the Scope of Unlicensed Concealed Carry of a Firearm in Arkansas Pursuant to Arkansas Code Annotated Section 5-73-120 as Amended by Act 746 of 2013, 43 U. Ark. Little Rock L. Rev. 125 (2021).

CASE NOTES

Analysis

Evidence and Proof.
Possession.

Evidence and Proof.

Stipulated facts were insufficient to prove that defendant unlawfully carried a weapon because the State failed to present substantial evidence that defendant possessed the gun with the purpose to unlawfully employ it against a person, as it showed that he appeared intoxicated and unsteady and he told the officers he had a pistol, which was removed from his pocket without incident. Defendant had not brandished his gun at anyone, he did not announce to anyone that he possessed a gun, and he never threatened anyone. Pettry v. State, 2020 Ark. App. 162, 595 S.W.3d 442 (2020).

Possession.

Police officers did not have a reasonable suspicion to stop and search defendant where no crime was being investigated at the time the blue lights were engaged, nothing indicated that defendant had an unlawful intent in possessing the weapon while at a store, and defendant had walked two miles away from the store at the time of the encounter. Merely possessing a weapon is not a crime in Arkansas; under the clear language of this section, the possessor of a handgun must have an unlawful intent to employ it as a weapon against a person in order to make that possession a criminal act. Taff v. State, 2018 Ark. App. 488, 562 S.W.3d 877 (2018).

5-73-122. Carrying a firearm in publicly owned buildings or facilities.

(a)(1) Except as provided in § 5-73-322, § 5-73-306(5), § 16-21-147, and this section, it is unlawful for a person other than a law enforcement officer, either on-duty or off-duty, a security guard in the employ of the state or an agency of the state or any city or county, or any state or federal military personnel, to knowingly carry or possess a loaded firearm or other deadly weapon in any publicly owned building or facility or on the State Capitol grounds.

(2) It is unlawful for any person other than a law enforcement officer, either on-duty or off-duty, a security guard in the employ of the state or an agency of the state or any city or county, or any state or federal military personnel, to knowingly carry or possess a firearm, whether loaded or unloaded, in the State Capitol Building or the Arkansas Justice Building in Little Rock.

(3) However, this subsection does not apply to a person carrying or possessing a firearm or other deadly weapon in a publicly owned building or facility or on the State Capitol grounds:

(A) For the purpose of participating in a shooting match or target practice under the auspices of the agency responsible for the publicly owned building or facility or State Capitol grounds;

(B) If necessary to participate in a trade show, exhibit, or educational course conducted in the publicly owned building or facility or on the State Capitol grounds;

(C)(i) If the person has a license to carry a concealed handgun under § 5-73-301 et seq. and is carrying a concealed handgun in his or her motor vehicle or has left the concealed handgun in his or her

locked and unattended motor vehicle in a publicly owned and maintained parking lot.

(ii)*(a)* As used in this subdivision (a)(3)(C), "parking lot" means a designated area or structure or part of a structure intended for the parking of motor vehicles or a designated drop-off zone for children at school.

(b) "Parking lot" does not include a parking lot owned, maintained, or otherwise controlled by:

(1) The Division of Correction;

(2) The Division of Community Correction; or

(3) A residential treatment facility owned or operated by the Division of Youth Services;

(D) If the person has completed the required training and received a concealed carry endorsement under § 5-73-322(g) and the place is not:

(i) A courtroom or the location of an administrative hearing conducted by a state agency, except as permitted by § 5-73-306(5) or § 5-73-306(6);

(ii) A public school kindergarten through grade twelve (K-12), a public prekindergarten, or a public daycare facility, except as permitted under subdivision (a)(3)(C) of this section;

(iii) A facility operated by the Division of Correction or the Division of Community Correction; or

(iv) A posted firearm-sensitive area, as approved by the Division of Arkansas State Police under § 5-73-325, located at:

(a) The Arkansas State Hospital;

(b) The University of Arkansas for Medical Sciences; or

(c) A collegiate athletic event;

(E) If the person has a license to carry a concealed handgun under § 5-73-301 et seq., is a justice of the Supreme Court or a judge on the Court of Appeals, and is carrying a concealed handgun in the Arkansas Justice Building; or

(F) If the person has a license to carry a concealed handgun under § 5-73-301 et seq. and is carrying a concealed handgun in a municipally owned or maintained park, or another similar municipally owned or maintained recreational property, except for those portions of a municipally owned or maintained park or recreational property that contain a:

(i) Football field, baseball field, soccer field, or other sports field where an athletic event or practice is occurring at the time;

(ii) Municipally owned or maintained building; or

(iii) Leased area to be used for a special event.

(4) As used in this section, "facility" does not mean a municipally owned or maintained park, football field, baseball field, soccer field, or another similar municipally owned or maintained recreational structure or property.

(b) However, a law enforcement officer, either on-duty or off-duty, officer of the court, bailiff, or other person authorized by the court is

permitted to possess a handgun in the courtroom of any court or a courthouse of this state.

(c) A person violating this section upon conviction is guilty of a Class C misdemeanor.

(d) An off-duty law enforcement officer carrying a firearm in a publicly owned building or facility may be required to be in physical possession of a valid identification identifying the person as a law enforcement officer.

(e) An off-duty law enforcement officer may not carry a firearm into a courtroom if the off-duty law enforcement officer is a party to or a witness in a civil or criminal matter unless the law provides otherwise.

History. Acts 1977, No. 549, §§ 1, 2; A.S.A. 1947, §§ 41-3113, 41-3114; Acts 1991, No. 1044, § 1; 1995, No. 1223, § 1; 1997, No. 910, § 1; 2013, No. 226, § 2; 2015, No. 1078, § 2; 2015, No. 1259, § 1; 2017, No. 562, § 1; 2017, No. 859, § 2; 2017, No. 1087, § 1; 2019, No. 431, § 1; 2019, No. 472, §§ 3-5; 2019, No. 910, §§ 680, 681; 2021, No. 638, § 1; 2021, No. 693, § 1.

A.C.R.C. Notes. Acts 2019, No. 472, § 6, provided: "Policy required.

"(a) A state institution shall develop a policy consistent with this act concerning the lawful open or concealed carry of a handgun by an off-duty law enforcement officer at a state institution affected by this act.

"(b) The promulgation of a policy under this section is exempt from the Arkansas Administrative Procedure Act, § 25-15-201 et seq."

Publisher's Notes. Acts 2017, No. 859, § 2 specifically amended this section as amended by Acts 2017, No. 562.

Amendments. The 2017 amendment by No. 562 substituted "5-73-306" for "5-73-306(5)" in (a)(1); added (a)(3)(D) and (a)(3)(E); and added "except as permitted under § 5-73-306(5), § 5-73-306(6), or this section" at the end of (b)(1).

The 2017 amendment by No. 859 included the amendments by No. 562; inserted "Arkansas" in (a)(2); inserted "or a public daycare facility" in (a)(3)(D)(ii); added (a)(3)(D)(iv); inserted "Arkansas" in (a)(3)(E); and made stylistic changes.

The 2017 amendment by No. 1087 substituted "§ 5-73-322, § 5-73-306(5), § 16-21-147, and this section" for "§ 5-73-322 and § 5-73-306(5)" in (a)(1); rewrote (b); and added (c).

The 2019 amendment by No. 431 added the (a)(3)(C)(ii)*(b)(1)* and (a)(3)(C)(ii)*(b)(2)* designations and added (a)(3)(C)(ii)*(b)(3)*.

The 2019 amendment by No. 472 substituted "either on-duty or off-duty a security guard" for "or a security guard" in (a)(1) and (a)(2); in (b), inserted "either on-duty or off-duty" and deleted "any" preceding "other person"; and added (d) and (e).

The 2019 amendment by No. 910 substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" in (a)(3)(C)(ii)*(b)* and (a)(3)(D)(iii).

The 2021 amendment by No. 638 added (a)(3)(F).

The 2021 amendment by No. 693 substituted "does not mean" for "means" in (a)(4).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Laws Allowing or Proscribing Openly Carrying Firearms. 25 A.L.R.7th Art. 5 (2017).

U. Ark. Little Rock L. Rev. Amie Alexander & Sarah Giammo, Survey of Legislation 2017: Arkansas General Assembly, 40 U. Ark. Little Rock L. Rev. 305 (2017).

Hannah Webb Howard, Note: An Analysis of the Scope of Unlicensed Concealed Carry of a Firearm in Arkansas Pursuant to Arkansas Code Annotated Section 5-73-120 as Amended by Act 746 of 2013, 43 U. Ark. Little Rock L. Rev. 125 (2021).

5-73-124. Tear gas — Pepper spray.

(a)(1) Except as otherwise provided in this section, any person who knowingly carries or has in his or her possession any tear gas or pepper spray in any form, or any person who knowingly carries or has in his or her possession any gun, bomb, grenade, cartridge, or other weapon designed for the discharge of tear gas or pepper spray, upon conviction is guilty of a Class A misdemeanor.

(2)(A) It is lawful for a person to possess or carry, and use, a container of tear gas or pepper spray to be used for self-defense purposes only.

(B) However, the capacity of the container shall not exceed three hundred milliliters (300 ml).

(b) The provisions of this section do not apply to any:

(1) Law enforcement officer while engaged in the discharge of his or her official duties; or

(2) Banking institution desiring to have possession of tear gas or pepper spray in any form for the purpose of securing funds in its custody from theft or robbery.

History. Acts 1949, No. 338, §§ 1-3; 1977, No. 329, §§ 1, 2; A.S.A. 1947, §§ 41-3168 — 41-3170; Acts 1993, No. 674, § 1; 1995, No. 1201, § 1; 2011, No. 1168, § 2; 2013, No. 1125, §§ 18, 19; 2021, No. 566, § 1.

Amendments. The 2021 amendment substituted "three hundred milliliters (300 ml)" for "one hundred fifty cubic centimeters (150 cc)" in (a)(2)(B).

5-73-125. Interstate sale and purchase of shotguns, rifles, and ammunition.

RESEARCH REFERENCES

ALR. Federal Interstate Handgun Transfer Ban, As Implemented by 18 U.S.C. § 922(a)(3) and 922(b)(3), and 27 C.F.R. § 478.99(a). 43 A.L.R. Fed. 3d Art. 1 (2019).

5-73-127. [Repealed.]

Publisher's Notes. This section, concerning possession of loaded center-fire weapons in certain areas, was repealed by Acts 2021, No. 433, § 1, effective July 28, 2021. The section was derived from Acts 1985, No. 515, §§ 1-3; 1987, No. 829, § 1; 1989, No. 63, § 1; 1991, No. 148, § 1; 1991, No. 731, § 1; 1993, No. 1099, § 1; 2007, No. 52, § 1; 2009, No. 748, § 40.

5-73-129. Furnishing a handgun or a prohibited weapon to a felon.

(a) A person commits the offense of furnishing a handgun to a felon if he or she sells, barters, leases, gives, rents, or otherwise furnishes a handgun to a person whom he or she knows has been found guilty of or pleaded guilty or nolo contendere to a felony.

(b) A person commits the offense of furnishing a prohibited weapon to a felon if he or she sells, barters, leases, gives, rents, or otherwise furnishes:

(1) A bomb;

(2) Metal knuckles;

(3) A defaced firearm, as described in § 5-73-107; or

(4) Other implement for the infliction of serious physical injury or death that serves no lawful purpose,

to a person he or she knows has been found guilty of or who has pleaded guilty or nolo contendere to a felony.

(c) Furnishing a handgun or a prohibited weapon to a felon is a Class B felony.

History. Acts 1994 (2nd Ex. Sess.), No. 41, § 1; 1994 (2nd Ex. Sess.), No. 42, § 1; 2019, No. 495, § 3; 2019, No. 1051, § 3.

A.C.R.C. Notes. Pursuant to § 1-2-207(b), subsection (b) of this section is set out as amended by Acts 2019, No. 1051, § 3. Acts 2019, No. 495, § 3, amended subsection (b) of this section to read as follows:

"(b) A person commits the offense of furnishing a prohibited weapon to a felon if he or she sells, barters, leases, gives, rents, or otherwise furnishes:

"(1) A sawed-off shotgun or rifle;

"(2) A machine gun;

"(3) A bomb;

"(4) Metal knuckles;

"(5) A defaced firearm, as defined in § 5-73-107; or

"(6) Other implement for the infliction of serious physical injury or death that serves no lawful purpose,

"to a person he or she knows has been found guilty of or who has pleaded guilty or nolo contendere to a felony."

Amendments. The 2019 amendment by No. 495 deleted former (b)(2) and redesignated the remaining subdivisions accordingly; and, in (b)(6), deleted "common" preceding "lawful" and substituted "he or she knows" for "who".

The 2019 amendment by No. 1051 deleted former (b)(1) through (b)(3) and redesignated the remaining subdivisions accordingly; substituted "described" for "defined" in (b)(3); and in (b)(4), deleted "common" preceding "lawful" and substituted "he or she knows" for "who".

5-73-130. Seizure and forfeiture of firearm — Seizure and forfeiture of motor vehicle — Disposition of property seized.

(a) If a person under eighteen (18) years of age is unlawfully in possession of a firearm, the firearm shall be seized and, after an adjudication of delinquency or a conviction, is subject to forfeiture.

(b) If a felon or a person under eighteen (18) years of age is unlawfully in possession of a firearm in a motor vehicle, the motor vehicle is subject to seizure and, after an adjudication of delinquency or a conviction, subject to forfeiture.

(c) As used in this section, "unlawfully in possession of a firearm" does not include any act of possession of a firearm that is prohibited only by a regulation or rule of the Arkansas State Game and Fish Commission.

(d) The procedures for forfeiture and disposition of the seized property are as follows:

(1) The prosecuting attorney of the judicial district within whose jurisdiction the property is seized that is sought to be forfeited shall

promptly proceed against the property by filing in the circuit court a petition for an order to show cause why the circuit court should not order forfeiture of the property; and

(2) The petition shall be verified and shall set forth:

(A) A statement that the action is brought pursuant to this section;

(B) The law enforcement agency bringing the action;

(C) A description of the property sought to be forfeited;

(D) A statement that on or about a date certain there was an adjudication of delinquency or a conviction and a finding that the property seized is subject to forfeiture;

(E) A statement detailing the facts in support of subdivision (d)(1) of this section; and

(F) A list of all persons known to the law enforcement agency, after diligent search and inquiry, who may claim an ownership interest in the property by title or registration or by virtue of a lien allegedly perfected in the manner prescribed by law.

(e)(1) Upon receipt of a petition complying with the requirements of subdivision (d)(1) of this section, the circuit court judge having jurisdiction shall issue an order to show cause setting forth a statement that this subchapter is the controlling law.

(2) In addition, the order shall set a date at least forty-one (41) days from the date of first publication of the order pursuant to subsection (f) of this section for all persons claiming an interest in the property to file such pleadings as they desire as to why the circuit court should not order the forfeiture of the property for use, sale, or other disposition by the law enforcement agency seeking forfeiture of the property.

(3) The circuit court shall further order that any person who does not appear on that date is deemed to have defaulted and waived any claim to the subject property.

(f)(1) The prosecuting attorney shall give notice of the forfeiture proceedings by:

(A) Causing a copy of the order to show cause to be published two (2) times each week for two (2) consecutive weeks in a newspaper having general circulation in the county where the property is located with the last publication being not less than five (5) days before the show cause hearing; and

(B) Sending a copy of the petition and order to show cause by certified mail, return receipt requested, to each person having ownership of or a security interest in the property or in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure if:

(i) The property is of a type for which title or registration is required by law;

(ii) The owner of the property is known in fact to the law enforcement agency at the time of seizure; or

(iii) The property is subject to a security interest perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.

(2) The law enforcement agency is only obligated to make diligent search and inquiry as to the owner of the property, and if, after diligent

search and inquiry, the law enforcement agency is unable to ascertain the owner, the requirement of actual notice by mail with respect to a person having a perfected security interest in the property is not applicable.

(g) At the hearing on the matter, the petitioner has the burden to establish that the property is subject to forfeiture by a preponderance of the evidence.

(h) In determining whether or not a motor vehicle should be ordered forfeited, the circuit court may take into consideration the following factors:

(1) Any prior criminal conviction or delinquency adjudication of the felon or juvenile;

(2) Whether or not the firearm was used in connection with any other criminal act;

(3) Whether or not the motor vehicle was used in connection with any other criminal act;

(4) Whether or not the juvenile or felon was the lawful owner of the motor vehicle in question;

(5) If the juvenile or felon is not the lawful owner of the motor vehicle in question, whether or not the lawful owner knew of the unlawful act being committed that gives rise to the forfeiture penalty; and

(6) Any other factor the circuit court deems relevant.

(i) The final order of forfeiture by the circuit court shall perfect in the law enforcement agency right, title, and interest in and to the property and shall relate back to the date of the seizure.

(j) Physical seizure of property is not necessary in order to allege in a petition under this section that the property is forfeitable.

(k) Upon filing the petition, the prosecuting attorney for the judicial district may also seek a protective order to prevent the transfer, encumbrance, or other disposal of any property named in the petition.

(l) The law enforcement agency to which a motor vehicle is forfeited shall either:

(1) Sell the motor vehicle in accordance with subsection (m) of this section; or

(2) If the motor vehicle is not subject to a lien that has been preserved by the circuit court, retain the motor vehicle for official use.

(m)(1) If a law enforcement agency desires to sell a forfeited motor vehicle, the law enforcement agency shall first cause notice of the sale to be made by publication at least two (2) times a week for two (2) consecutive weeks in a newspaper having general circulation in the county and by sending a copy of the notice of the sale by certified mail, return receipt requested, to each person having ownership of or a security interest in the property or in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure if:

(A) The property is of a type for which title or registration is required by law;

(B) The owner of the property is known in fact to the law enforcement agency at the time of seizure; or

(C) The property is subject to a security interest perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.

(2) The notice of the sale shall include the time, place, and conditions of the sale and a description of the property to be sold.

(3) The property shall then be disposed of at public auction to the highest bidder for cash without appraisal.

(n) The proceeds of any sale and any moneys forfeited shall be applied to the payment of:

(1) The balance due on any lien preserved by the circuit court in the forfeiture proceedings;

(2) The cost incurred by the seizing law enforcement agency in connection with the storage, maintenance, security, and forfeiture of the property;

(3) The costs incurred by the prosecuting attorney or attorney for the law enforcement agency, approved by the prosecuting attorney, to which the property is forfeited; and

(4) Costs incurred by the circuit court.

(o) The remaining proceeds or moneys shall be deposited into a special county fund to be titled the "Juvenile Crime Prevention Fund", and the moneys in the fund shall be used solely for making grants to community-based nonprofit organizations that work with juvenile crime prevention and rehabilitation.

(p)(1) The law enforcement agency to which a firearm is forfeited may trade the firearm to a federally licensed firearms dealer for credit toward future purchases by the law enforcement agency.

(2) If the firearm is unable to be traded to a federally licensed firearms dealer, the law enforcement agency may dispose of the firearm as the law enforcement agency deems appropriate.

History. Acts 1994 (2nd Ex. Sess.), No. 55, § 1; 1994 (2nd Ex. Sess.), No. 56, § 1; 2005, No. 1994, § 260; 2007, No. 827, § 96; 2019, No. 315, § 171; 2019, No. 630, §§ 1, 2; 2021, No. 433, § 2.

Amendments. The 2019 amendment by No. 315 inserted "or rule" in (c)(2).

The 2019 amendment by No. 630 substituted "a protective order" for "such protective orders as are necessary" in (k); in the introductory language of (l), substituted "a motor vehicle" for "the property" and added "either"; deleted former (l)(1) and (l)(2); redesignated (l)(1)(A) and (l)(1)(B) as (l)(1) and (l)(2); and added (p).

The 2021 amendment deleted former (c)(1) and removed the former (c)(2) designation.

5-73-131. Possession or use of weapons by incarcerated persons.

(a) A person commits the offense of possession or use of weapons by incarcerated persons if, without approval of custodial authority he or she uses, possesses, makes, repairs, sells, or otherwise deals in any weapon, including, but not limited to, any bomb, firearm, knife, or other implement for the infliction of serious physical injury or death and that serves no common lawful purpose, while incarcerated in the Division of Correction, the Division of Community Correction, or a county or municipal jail or detention facility.

(b) Possession or use of weapons by incarcerated persons is a Class D felony.

(c) This section is not applicable to possession of a weapon by an incarcerated person before he or she completes the standard booking and search procedures in a jail facility after arrest.

History. Acts 1995, No. 443, § 1; 1995, No. 453, § 1; 2019, No. 910, § 682.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" in (a).

5-73-132. Sale, rental, or transfer of firearm to person prohibited from possessing firearms.

(a) A person shall not sell, rent, or transfer a firearm to any person whom he or she knows is prohibited by state or federal law from possessing the firearm.

(b)(1) Violation of this section is a Class A misdemeanor, unless the firearm is:

(A) A handgun;

(B) An explosive or incendiary device, as defined in § 5-71-301;

(C) A defaced firearm, as described in § 5-73-107; or

(D) Other implement for the infliction of serious physical injury or death that serves no lawful purpose.

(2) If the firearm is listed in subdivision (b)(1) of this section, a violation of this section is a Class B felony.

History. Acts 1999, No. 1558, § 3; 2019, No. 495, § 4; 2019, No. 1051, § 4.

A.C.R.C. Notes. Pursuant to § 1-2-207(b), subsection (b) of this section is set out as amended by Acts 2019, No. 1051, § 4. Acts 2019, No. 495, § 4, amended subsection (b) of this section to read as follows:

"(b)(1) Violation of this section is a Class A misdemeanor, unless the firearm is:

"(A) A handgun;

"(B) A sawed-off or short-barrelled shotgun, as defined in § 5-1-102;

"(C) A sawed-off or short-barrelled rifle, as defined in § 5-1-102;

"(D) A machine gun;

"(E) An explosive or incendiary device, as defined in § 5-71-301;

"(F) A defaced firearm, as defined in § 5-73-107; or

"(G) Other implement for the infliction of serious physical injury or death that serves no lawful purpose.

"(2) If the firearm is listed in subdivision (b)(1) of this section, a violation of this section is a Class B felony."

Amendments. The 2019 amendment by No. 495 deleted former (b)(1)(D) and redesignated the remaining subdivisions accordingly; and deleted "common" preceding "lawful" in (b)(1)(G).

The 2019 amendment by No. 1051 deleted former (b)(1)(B) through (b)(1)(E) and redesignated the remaining subdivisions accordingly; substituted "described" for "defined" in (b)(1)(C); and deleted "common" preceding "lawful" in (b)(1)(D).

RESEARCH REFERENCES

ALR. Federal Interstate Handgun Transfer Ban, As Implemented by 18 U.S.C. § 922(a)(3) and 922(b)(3), and 27 C.F.R. § 478.99(a). 43 A.L.R. Fed. 3d Art. 1 (2019).

Subchapter 3 — Concealed Handguns

SECTION.
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5-73-325. Firearm-sensitive areas — Security plan approval.
5-73-326. [Repealed.]
5-73-327. Discharged veterans.

Effective Dates. Acts 2017, No. 562, § 8: Sept. 1, 2017.

Acts 2017, No. 859, § 10: Sept. 1, 2017.

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2020, No. 97, § 49: July 1, 2020. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2020 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2020 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2020."

RESEARCH REFERENCES

ALR. Construction and Application of State Statutes and Local Ordinances Regulating Licenses or Permits to Carry Concealed Weapons. 12 A.L.R.7th Art. 4 (2016).

5-73-301. Definitions.

As used in this subchapter:

(1) "Acceptable electronic format" means an electronic image produced on the person's own cellular phone or other type of portable electronic device that displays all of the information on a concealed handgun license as clearly as an original concealed handgun license;

(2) "Concealed" means to cover from observation so as to prevent public view;

(3) "Convicted" means that a person pleaded guilty or nolo contendere to or was found guilty of a criminal offense;

(4) "Handgun" means any firearm, other than a fully automatic firearm, with a barrel length of less than twelve inches (12″) that is designed, made, or adapted to be fired with one (1) hand;

(5) "Licensee" means a person granted a valid license to carry a concealed handgun pursuant to this subchapter;

(6) "Parking lot" means an area, structure, or part of a structure designated for the parking of motor vehicles or a designated drop-off zone for children at a school;

(7) "Private university or private college" means an institution of higher education that is not a public university, public college, or community college as defined in § 5-73-322; and

(8) "Retired law enforcement officer" means a person who retired as a certified law enforcement officer from a local or state law enforcement agency with at least ten (10) years of experience as a law enforcement officer.

History. Acts 1995, No. 411, § 1; 1995, No. 419, § 1; 1997, No. 1239, § 1; 2007, No. 664, § 1; 2007, No. 827, §§ 98, 99; 2013, No. 419, § 1; 2015, No. 1078, § 3; 2017, No. 859, § 3; 2017, No. 957, § 1.

Amendments. The 2017 amendment by No. 859 added the definition for "Private university or private college".

The 2017 amendment by No. 957 added the definition for "Retired law enforcement officer".

Effective Dates. Acts 2017, No. 859, § 10: Sept. 1, 2017.

5-73-302. Authority to issue license.

(a) The Director of the Division of Arkansas State Police may issue a license to carry a concealed handgun to a person qualified as provided in this subchapter.

(b)(1) For new licenses issued after July 31, 2007, the license to carry a concealed handgun is valid throughout the state for a period of five (5) years from the date of issuance.

(2) After July 31, 2007, upon renewal, an existing valid license to carry a concealed handgun shall be issued for a period of five (5) years.

(c)(1)(A) After July 31, 2007, a license or renewal of a license issued to a former elected or appointed sheriff of any county of this state shall be issued for a period of five (5) years.

(B) The license issued to a former elected or appointed sheriff is revocable on the same grounds as other licenses.

(2)(A) The former elected or appointed sheriff shall meet the same qualifications as all other applicants.

(B) However, the former elected or appointed sheriff is exempt from the fee prescribed by § 5-73-311(a)(2) and from the training requirements of § 5-73-309(13) for issuance.

History. Acts 1995, No. 411, § 2; 1995, No. 419, § 2; 1997, No. 389, § 1; 2007, No. 1014, §§ 1, 3; 2019, No. 910, § 5736.

Amendments. The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a).

5-73-304. Exemptions.

(a)(1)(A) A current or former certified law enforcement officer, chief of police, court bailiff, county sheriff, or retired law enforcement officer is exempt from the licensing requirements of this subchapter if otherwise authorized to carry a concealed handgun.

(B) A former certified law enforcement officer whose employment was terminated by a law enforcement agency due to disciplinary reasons or because he or she committed a disqualifying criminal offense is not exempt from the licensing requirements of this subchapter.

(2) Solely for purposes of this subchapter, an auxiliary law enforcement officer certified by the Arkansas Commission on Law Enforcement Standards and Training and approved by the county sheriff of the county where he or she is acting as an auxiliary law enforcement officer is deemed to be a certified law enforcement officer.

(b) An employee of a local detention facility is exempt from the licensing requirements of this subchapter if the employee of a local detention facility is authorized in writing as exempt from the licensing requirements of this subchapter by the chief of police or county sheriff that employs the employee of a local detention facility.

(c) The authorization prescribed in subsection (b) of this section shall be carried on the person of the employee of a local detention facility and be produced upon demand at the request of any law enforcement officer or owner or operator of any of the prohibited places as set out in § 5-73-306.

(d) A retired law enforcement officer is exempt from the licensing requirements of this subchapter if the retired law enforcement officer is permitted to carry a concealed handgun under § 12-15-202(b).

(e) As used in this section, "employee of a local detention facility" means a person who:

(1) Is employed by a county sheriff or municipality that operates a local detention facility and whose job duties include:

(A) Securing a local detention facility;

(B) Monitoring inmates in a local detention facility; and

(C) Administering the daily operation of the local detention facility; and

(2) Has completed the minimum training requirements for his or her position.

History. Acts 1995, No. 411, § 2; 1995, No. 419, § 2; 1997, No. 696, § 1; 1997, No. 1239, § 8; 1999, No. 1508, §§ 1, 7; 2013, No. 415, § 1; 2013, No. 1220, § 1; 2017, No. 957, § 2.

Amendments. The 2017 amendment inserted "or retired law enforcement officer" in (a)(1)(A); rewrote (b); deleted "auxiliary law enforcement officer or" preceding "employee" in (c); inserted (d); and redesignated former (d) as (e).

5-73-306. Prohibited places.

Except as permitted under § 5-73-322(g), a license to carry a concealed handgun issued under this subchapter does not authorize a person to carry a concealed handgun into:

(1) Any police station, sheriff's station, or Division of Arkansas State Police station;

(2) An Arkansas Highway Police Division of the Arkansas Department of Transportation facility;

(3)(A) A building of the Arkansas Department of Transportation or onto grounds adjacent to a building of the Arkansas Department of Transportation.

(B) However, subdivision (3)(A) of this section does not apply to:

(i) A rest area or weigh station of the Arkansas Department of Transportation; or

(ii) A publicly owned and maintained parking lot that is a publicly accessible parking lot if the licensee is carrying a concealed handgun in his or her motor vehicle or has left the concealed handgun in his or her locked and unattended motor vehicle in the publicly owned and maintained parking lot;

(4) Any part of a detention facility, prison, jail, or residential treatment facility owned or operated by the Division of Youth Services, including without limitation a parking lot owned, maintained, or otherwise controlled by:

(A) The Division of Correction;

(B) The Division of Community Correction; or

(C) A residential treatment facility owned or operated by the Division of Youth Services;

(5) Any courthouse, courthouse annex, or other building owned, leased, or regularly used by a county for conducting court proceedings or housing a county office unless:

(A) The licensee is:

(i) Employed by the county;

(ii) A countywide elected official;

(iii) A justice of the peace; or

(iv)*(a)* Employed by a governmental entity other than the county with an office or place of employment inside the courthouse, the courthouse annex, or other building owned, leased, or regularly used by the county for conducting court proceedings or housing a county office.

(b) A licensee is limited to carrying a concealed handgun under subdivision (5)(A)(iv)*(a)* of this section into the courthouse, courthouse annex, or other building owned, leased, or regularly used by

the county for conducting court proceedings or housing a county office where the office or place of employment of the governmental entity that employs him or her is located;

(B) The licensee's principal place of employment is within the courthouse, the courthouse annex, or other building owned, leased, or regularly used by the county for conducting court proceedings or housing a county office; and

(C) The quorum court by ordinance approves a plan that allows licensees permitted under this subdivision (5) to carry a concealed handgun into the courthouse, courthouse annex, or other building owned, leased, or regularly used by a county for conducting court proceedings as set out by the local security and emergency preparedness plan;

(6)(A) Any courtroom.

(B) However, nothing in this subchapter precludes a judge from carrying a concealed weapon or determining who will carry a concealed weapon into his or her courtroom;

(7) Any meeting place of the governing body of any governmental entity;

(8) Any meeting of the General Assembly or a committee of the General Assembly;

(9) Any state office;

(10) Any athletic event not related to firearms;

(11)(A) A portion of an establishment, except a restaurant as defined in § 3-5-1202, licensed to dispense alcoholic beverages for consumption on the premises.

(B) A person with a concealed carry endorsement under § 5-73-322(g) and who is carrying a concealed handgun may not enter an establishment under this section if the establishment either places a written notice as permitted under subdivision (18) of this section or provides notice under subdivision (19) of this section prohibiting a person with a license to possess a concealed handgun at the physical location;

(12)(A) A portion of an establishment, except a restaurant as defined in § 3-5-1202, where beer or light wine is consumed on the premises.

(B) A person with a concealed carry endorsement under § 5-73-322(g) and who is carrying a concealed handgun may not enter an establishment under this section if the establishment either places a written notice as permitted under subdivision (18) of this section or provides notice under subdivision (19) of this section prohibiting a person with a license to possess a concealed handgun at the physical location;

(13)(A) A school, college, community college, or university campus building or event.

(B) However, subdivision (13)(A) of this section does not apply to:

(i) A kindergarten through grade twelve (K-12) private school operated by a church or other place of worship that:

(a) Is located on the developed property of the kindergarten through grade twelve (K-12) private school;

(b) Allows the licensee to carry a concealed handgun into the church or other place of worship under this section; and

(c) Allows the licensee to possess a concealed handgun on the developed property of the kindergarten through grade twelve (K-12) private school under § 5-73-119(e);

(ii) A kindergarten through grade twelve (K-12) private school or a prekindergarten private school that through its governing board or director has set forth the rules and circumstances under which the licensee may carry a concealed handgun into a building or event of the kindergarten through grade twelve (K-12) private school or the prekindergarten private school;

(iii) Participation in an authorized firearms-related activity;

(iv) Carrying a concealed handgun as authorized under § 5-73-322; or

(v) A publicly owned and maintained parking lot of a college, community college, or university if the licensee is carrying a concealed handgun in his or her motor vehicle or has left the concealed handgun in his or her locked and unattended motor vehicle;

(14) Inside the passenger terminal of any airport, except that no person is prohibited from carrying any legal firearm into the passenger terminal if the firearm is encased for shipment for purposes of checking the firearm as baggage to be lawfully transported on any aircraft;

(15)(A) Any church or other place of worship.

(B) However, this subchapter does not preclude a church or other place of worship from determining who may carry a concealed handgun into the church or other place of worship.

(C) A person with a concealed carry endorsement under § 5-73-322(g) and who is carrying a concealed handgun may not enter a church or other place of worship under this section if the church or other place of worship either places a written notice as permitted under subdivision (18) of this section or provides notice under subdivision (19) of this section prohibiting a person with a license to possess a concealed handgun at the physical location;

(16) Any place where the carrying of a firearm is prohibited by federal law;

(17) Any place where a parade or demonstration requiring a permit is being held, and the licensee is a participant in the parade or demonstration;

(18)(A)(i) Any place at the discretion of the person or entity exercising control over the physical location of the place by placing at each entrance to the place a written notice clearly readable at a distance of not less than ten feet (10') that "carrying a handgun is prohibited".

(ii)*(a)* If the place does not have a roadway entrance, there shall be a written notice placed anywhere upon the premises of the place.

(b) In addition to the requirement of subdivision (18)(A)(ii)*(a)* of this section, there shall be at least one (1) written notice posted within every three (3) acres of a place with no roadway entrance.

(iii) A written notice as described in subdivision (18)(A)(i) of this section is not required for a private home.

(iv) Any licensee entering a private home shall notify the occupant that the licensee is carrying a concealed handgun.

(B) Subdivision (18)(A) of this section does not apply if the place is:

(i) A public university, public college, or community college, as defined in § 5-73-322, and the licensee is carrying a concealed handgun as provided under § 5-73-322;

(ii) A publicly owned and maintained parking lot if the licensee is carrying a concealed handgun in his or her motor vehicle or has left the concealed handgun in his or her locked and unattended motor vehicle;

(iii) A parking lot of a private employer and the person is carrying a handgun as provided under § 11-5-117; or

(iv) A place owned, controlled, or operated by a local unit of government as defined in § 14-16-504 if the licensee is carrying a concealed handgun as provided under § 5-73-322(g) and (h), unless the place is listed in § 5-73-122(a)(3)(D)(i)-(iv) or the place is a part of a building licensed to dispense alcoholic beverages for consumption on the premises.

(C) The person or entity exercising control over the physical location of a place that does not use his, her, or its authority under this subdivision (18) to prohibit a person from possessing a concealed handgun is immune from a claim for monetary damages arising from or related to the decision not to place at each entrance to the place a written notice under this subdivision (18);

(19)(A)(i) A place owned or operated by a private entity that prohibits the carrying of a concealed handgun that posts a written notice as described under subdivision (18)(A) of this section.

(ii)*(a)* A place owned or operated by a private entity that chooses not to post a written notice as described under subdivision (18)(A) of this section may provide written or verbal notification to a licensee who is carrying a concealed handgun at the place owned or operated by a private entity that carrying of a concealed handgun is prohibited.

(b) A licensee who receives written or verbal notification under subdivision (19)(A)(ii)*(a)* of this section is deemed to have violated this subdivision (19) if the licensee while carrying a concealed handgun either remains at or returns to the place owned or operated by the private entity.

(B) A place owned or operated by a private entity under this subdivision (19) includes without limitation:

(i) A private university or private college;

(ii) A church or other place of worship;

(iii) An establishment, except a restaurant as defined in § 3-5-1202, licensed to dispense alcoholic beverages for consumption on the premises; and

(iv) An establishment, except a restaurant as defined in § 3-5-1202, where beer or light wine is consumed on the premises; or

(20) A posted firearm-sensitive area, as approved by the Division of Arkansas State Police under § 5-73-325, located at:

(A) The Arkansas State Hospital;
(B) The University of Arkansas for Medical Sciences; or
(C) A collegiate athletic event.

History. Acts 1995, No. 411, § 2; 1995, No. 419, § 2; 1997, No. 1239, § 2; 2003, No. 1110, § 1; 2007, No. 664, § 2; 2009, No. 294, § 28; 2011, No. 758, § 1; 2013, No. 67, § 1; 2013, No. 226, §§ 3, 4; 2013, No. 1390, § 2; 2015, No. 933, § 2; 2015, No. 1078, §§ 4-7; 2015, No. 1175, § 1; 2015, No. 1259, § 2; 2017, No. 562, §§ 2-5; 2017, No. 707, § 5; 2017, No. 859, §§ 4-6; 2017, No. 1071, § 2; 2017, No. 1090, § 1; 2019, No. 431, § 2; 2019, No. 910, § 683; 2021, No. 809, § 1; 2021, No. 1024, § 1.

A.C.R.C. Notes. Acts 2017, No. 1071, § 1, provided: "Legislative intent. It is the intent of this act to reinforce and protect the right of each citizen to lawfully transport and store a handgun within his or her private motor vehicle for lawful purposes in any place where the private motor vehicle is otherwise permitted to be located."

Publisher's Notes. Acts 2017, No. 859, §§ 4-6, specifically amended this section as amended by Acts 2017, No. 562.

Amendments. The 2017 amendment by No. 562 substituted "Except as permitted under § 5-73-322(g), a license to carry a concealed handgun issued under this subchapter does not authorize a" for "No license to carry a concealed handgun issued pursuant to this subchapter authorizes any" in the introductory language; redesignated (11) as (11)(A) and (12) as (12)(A); substituted "A" for "Any" in (11)(A) and (12)(A); and added (11)(B), (12)(B), (15)(C), and (18)(C).

The 2017 amendment by No. 707 substituted "Department of Transportation" for "State Highway and Transportation Department" throughout (2) and (3); and made stylistic changes.

The 2017 amendment by No. 859, in (11)(B) and (12)(B), inserted "either" and "or provides notice under subdivision (19) of this section"; in (15)(C), inserted "and who is carrying a concealed handgun", "either", and "or provides notice under subdivision (19) of this section"; added (19) and (20); and made stylistic changes.

The 2017 amendment by No. 1071 substituted "place" for "physical location" in the introductory language of (18)(B); and added (18)(B)(iii).

The 2017 amendment by No. 1090 added (5)(A)(iii) and (iv); and inserted "courthouse annex, or other building owned, leased, or regularly used by a county for conducting court proceedings" in (5)(C).

The 2019 amendment by No. 431 added the (4)(A) and (4)(B) designations and added (4)(C); and inserted "residential treatment facility owned or operated by the Division of Youth Services" in the introductory language of (4).

The 2019 amendment by No. 910 substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" in (4).

The 2021 amendment by No. 809, in (18)(B)(iii), substituted "person is carrying" for "licensee is carrying", deleted "concealed" preceding "handgun", and substituted "§ 11-5-117" for "§ 5-73-326".

The 2021 amendment by No. 1024 added (18)(B)(iv).

Effective Dates. Acts 2017, No. 562, § 8: Sept. 1, 2017.

Acts 2017, No. 859, § 10: Sept. 1, 2017.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Hannah Webb Howard, Note: An Analysis of the Scope of Unlicensed Concealed Carry of a Firearm in Arkansas Pursuant to Arkansas Code Annotated Section 5-73-120 as Amended by Act 746 of 2013, 43 U. Ark. Little Rock L. Rev. 125 (2021).

5-73-308. License — Issuance or denial.

(a)(1)(A) The Director of the Division of Arkansas State Police may deny a license if within the preceding five (5) years the applicant has

been found guilty of one (1) or more crimes of violence constituting a misdemeanor or for the offense of carrying a weapon.

(B) The director may revoke a license if the licensee has been found guilty of one (1) or more crimes of violence within the preceding three (3) years.

(2) Subdivision (a)(1) of this section does not apply to a misdemeanor that has been expunged or for which the imposition of sentence was suspended.

(3) Upon notification by any law enforcement agency or a court and subsequent written verification, the director shall suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime that would disqualify the licensee or applicant from having a license under this subchapter until final disposition of the case.

(b)(1) The director may deny a license to carry a concealed handgun if the county sheriff or chief of police, if applicable, of the applicant's place of residence or the director or the director's designee submits an affidavit that the applicant has been or is reasonably likely to be a danger to himself or herself or others or to the community at large, as demonstrated by past patterns of behavior or participation in an incident involving unlawful violence or threats of unlawful violence, or if the applicant is under a criminal investigation at the time of applying for a license to carry a concealed handgun.

(2) Within one hundred twenty (120) days after the date of receipt of the items listed in § 5-73-311(a), the director shall:

(A) Issue the license; or

(B) Deny the application based solely on the ground that the applicant fails to qualify under the criteria listed in this subchapter.

(3)(A) If the director denies the application, the director shall notify the applicant in writing, stating the grounds for denial.

(B) The decision of the director is subject to appeal under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1995, No. 411, § 2; 1995, No. 419, § 2; 1997, No. 1239, § 4; 2011, No. 758, § 2; 2013, No. 1328, § 1; 2019, No. 910, § 5737.

Amendments. The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a)(1)(A).

5-73-309. License — Requirements.

The Director of the Division of Arkansas State Police shall issue a license to carry a concealed handgun if the applicant:

(1) Is a citizen of the United States or a permanent legal resident;

(2)(A) Is a resident of the state and has been a resident continuously for ninety (90) days or longer immediately preceding the filing of the application.

(B) However, subdivision (2)(A) of this section does not apply to any:

(i) Active duty member of the United States Armed Forces who submits documentation of his or her active duty status; or

(ii) Spouse of an active duty member of the United States Armed Forces who submits documentation of his or her spouse's active duty status;

(3) Is at least:

(A) Twenty-one (21) years of age; or

(B) Eighteen (18) years of age and is:

(i) Currently a federally recognized commissioned or noncommissioned officer or an enlisted member on active duty in the United States Armed Forces;

(ii) In the National Guard or a reserve component of the United States Armed Forces; or

(iii) A former member of the United States Armed Forces who has been honorably discharged;

(4) Does not suffer from a mental or physical infirmity that prevents the safe handling of a handgun and has not threatened or attempted suicide;

(5) Has not been convicted of a felony in a court of this state, of any other state, or of the United States unless:

(A) The applicant is subsequently granted a pardon by the Governor or the President of the United States explicitly restoring his or her ability to possess a firearm;

(B) The applicant was sentenced prior to March 13, 1995, and the record of conviction has been sealed or expunged under Arkansas law; or

(C) The applicant's offense was dismissed and sealed or expunged under § 16-93-301 et seq. or § 16-98-303(g);

(6) Is not subject to any federal, state, or local law that makes it unlawful to receive, possess, or transport any firearm, and has had his or her background check successfully completed through the Division of Arkansas State Police and the Federal Bureau of Investigation's National Instant Criminal Background Check System;

(7)(A) Does not chronically or habitually abuse a controlled substance to the extent that his or her normal faculties are impaired.

(B) It is presumed that an applicant chronically and habitually uses a controlled substance to the extent that his or her faculties are impaired if the applicant has been voluntarily or involuntarily committed to a treatment facility for the abuse of a controlled substance or has been found guilty of a crime under the provisions of the Uniform Controlled Substances Act, § 5-64-101 et seq., or a similar law of any other state or the United States relating to a controlled substance within the three-year period immediately preceding the date on which the application is submitted;

(8)(A) Does not chronically or habitually use an alcoholic beverage to the extent that his or her normal faculties are impaired.

(B) It is presumed that an applicant chronically and habitually uses an alcoholic beverage to the extent that his or her normal

faculties are impaired if the applicant has been voluntarily or involuntarily committed as an alcoholic to a treatment facility or has been convicted of two (2) or more offenses related to the use of alcohol under a law of this state or similar law of any other state or the United States within the three-year period immediately preceding the date on which the application is submitted;

(9) Desires a legal means to carry a concealed handgun to defend himself or herself;

(10) Has not been adjudicated mentally incompetent;

(11)(A) Has not been voluntarily or involuntarily committed to a mental institution or mental health treatment facility.

(B) An applicant who is a veteran who voluntarily sought mental health treatment at a mental health institution or mental health treatment facility may obtain a license under this subchapter if a circuit court grants his or her petition under § 5-73-327;

(12) Is not a fugitive from justice or does not have an active warrant for his or her arrest;

(13) Has satisfactorily completed a training course as prescribed and approved by the director; and

(14) Signs a statement of allegiance to the United States Constitution and the Arkansas Constitution.

History. Acts 1995, No. 411, § 2; 1995, No. 419, § 2; 1997, No. 368, § 1; 1997, No. 1239, § 10; 1999, No. 51, § 1; 2003, No. 545, §§ 1, 5; 2007, No. 198, § 1; 2007, No. 664, § 3; 2013, No. 989, § 1; 2015, No. 105, § 1; 2015, No. 649, § 1; 2019, No. 910, §§ 5738, 5739; 2019, No. 917, § 1; 2019, No. 1038, § 1.

Amendments. The 2019 amendment by No. 910 substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in the introductory language and in (6).

The 2019 amendment by No. 917 added the (11)(A) designation; and added (11)(B).

The 2019 amendment by No. 1038 rewrote (5).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Hannah Webb Howard, Note: An Analysis of the Scope of Unlicensed Concealed Carry of a Firearm in Arkansas Pursuant to Arkansas Code Annotated Section 5-73-120 as Amended by Act 746 of 2013, 43 U. Ark. Little Rock L. Rev. 125 (2021).

5-73-310. Application form.

The application for a license to carry a concealed handgun shall be completed, under oath, on a form promulgated by the Director of the Division of Arkansas State Police and shall include only:

(1) The name, address, place and date of birth, race, and sex of the applicant;

(2) The driver's license number or Social Security number of the applicant;

(3) Any previous address of the applicant for the two (2) years preceding the date of the application;

(4) A statement that the applicant is in compliance with criteria contained within §§ 5-73-308(a) and 5-73-309;

(5) A statement that the applicant has been furnished a copy of this subchapter and is acquainted with the truth and understanding of this subchapter;

(6) A conspicuous warning that the application is executed under oath, and that a knowingly false answer to any question or the knowing submission of any false document by the applicant subjects the applicant to:

(A) Criminal prosecution and precludes any future license's being issued to the applicant; and

(B) Immediate revocation if the license has already been issued;

(7) A statement that the applicant desires a legal means to carry a concealed handgun to defend himself or herself;

(8)(A) A statement of whether the applicant is applying for:

(i) An unrestricted license, that allows the person to carry any handgun; or

(ii) A restricted license, that allows the person to carry any handgun other than a semiautomatic handgun.

(B)(i) An applicant requesting an unrestricted license shall establish proficiency in the use of a semiautomatic handgun.

(ii) An applicant requesting a restricted license shall establish proficiency in the use of a handgun and may use any kind of handgun when establishing proficiency; and

(9) A statement of whether or not the applicant has been found guilty of a crime of violence or domestic abuse.

History. Acts 1995, No. 411, § 2; 1995, No. 419, § 2; 1997, No. 1239, § 5; 1999, No. 786, § 1; 2019, No. 910, § 5740.

Amendments. The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in the introductory language.

5-73-311. Application procedure.

(a) The applicant for a license to carry a concealed handgun shall submit the following to the Division of Arkansas State Police:

(1) A completed application, as described in § 5-73-310;

(2) A nonrefundable license fee of fifty dollars ($50.00), except that:

(A) The nonrefundable license fee is twenty-five dollars ($25.00) if the applicant is sixty-five (65) years of age or older; and

(B)(i) There is no license fee if the applicant is a United States Armed Forces veteran or is currently serving in the United States Armed Forces.

(ii) An applicant shall submit a copy of his or her DD214 or similar document or valid military identification card to establish eligibility under subdivision (a)(2)(B)(i) of this section;

(3)(A) A full set of fingerprints of the applicant.

(B) In the event a legible set of fingerprints, as determined by the division and the Federal Bureau of Investigation, cannot be obtained after a minimum of two (2) attempts, the Director of the Division of

Arkansas State Police shall determine eligibility in accordance with criteria that the division shall establish by promulgating rules.

(C) Costs for processing the set of fingerprints as required in subdivision (a)(3)(A) of this section shall be borne by the applicant;

(4)(A) A waiver authorizing the division access to any medical, criminal, or other records concerning the applicant and permitting access to all of the applicant's criminal records.

(B) If a check of the applicant's criminal records uncovers any unresolved felony arrests over ten (10) years old, then the applicant shall obtain a letter of reference from the county sheriff, prosecuting attorney, or circuit judge of the county where the applicant resides that states that to the best of the county sheriff's, prosecuting attorney's, or circuit judge's knowledge that the applicant is of good character and free of any felony convictions.

(C) The division shall maintain the confidentiality of the medical, criminal, or other records; and

(5) A digital photograph of the applicant or a release authorization to obtain a digital photograph of the applicant from another source.

(b)(1) Upon receipt of the items listed in subsection (a) of this section, the division shall forward the full set of fingerprints of the applicant to the appropriate agencies for state and federal processing.

(2)(A) The division shall forward a notice of the applicant's application to the sheriff of the applicant's county of residence and, if applicable, the police chief of the applicant's municipality of residence.

(B)(i) The sheriff of the applicant's county of residence and, if applicable, the police chief of the applicant's municipality of residence may participate, at his or her discretion, in the process by submitting a voluntary report to the division containing any readily discoverable information that he or she feels may be pertinent to the licensing of any applicant.

(ii) The reporting under subdivision (b)(2)(B)(i) of this section shall be made within thirty (30) days after the date the notice of the application was sent by the division.

(c) A concealed handgun license issued, renewed, or obtained under § 5-73-314 or § 5-73-319 after December 31, 2007, shall bear a digital photograph of the licensee.

History. Acts 1995, No. 411, § 2; 1995, No. 419, § 2; 1997, No. 1239, § 9; 1997, No. 1251, § 1; 1999, No. 487, § 1; 2007, No. 664, § 4; 2009, No. 748, § 42; 2013, No. 1271, § 1; 2019, No. 61, § 1; 2019, No. 188, § 1; 2019, No. 910, §§ 5741-5745; 2021, No. 888, § 1.

Amendments. The 2019 amendment by identical acts Nos. 61 and 188, in (a)(2), substituted "fifty dollars ($50.00)" for "one hundred dollars ($100)" and "twenty-five dollars ($25.00)" for "fifty dollars ($50.00)".

The 2019 amendment by No. 910 substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in the introductory language of (a) and in (a)(3)(B); and substituted "division" for "department" twice in (a)(3)(B), and in (a)(4)(A), (a)(4)(C), (b)(2)(A), (b)(2)(B)(i), and (b)(2)(B)(ii).

The 2021 amendment added (a)(2)(B).

5-73-312. Revocation.

(a)(1) A license to carry a concealed handgun issued under this subchapter shall be revoked if the licensee becomes ineligible under the criteria set forth in § 5-73-308(a) or § 5-73-309.

(2)(A) Any law enforcement officer making an arrest of a licensee for a violation of this subchapter or any other statutory violation that requires revocation of a license to carry a concealed handgun shall confiscate the license and forward it to the Director of the Division of Arkansas State Police.

(B) The license shall be held until a determination of the charge is finalized, with the appropriate disposition of the license after the determination.

(b) When the Division of Arkansas State Police receives notification from any law enforcement agency or court that a licensee has been found guilty or has pleaded guilty or nolo contendere to any crime involving the use of a weapon, the license issued under this subchapter is immediately revoked.

(c) The director shall revoke the license of any licensee who has pleaded guilty or nolo contendere to or been found guilty of an alcohol-related offense committed while carrying a handgun.

History. Acts 1995, No. 411, §§ 2, 4, 5; 1995, No. 419, §§ 2, 4, 5; 1997, No. 1239, § 11; 2003, No. 545, § 4; 2007, No. 827, § 101; 2019, No. 910, §§ 5746, 5747.

Amendments. The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a)(2)(A) and (b).

5-73-313. Expiration and renewal.

(a) Except as provided in subdivision (f)(1) of this section, the licensee may renew his or her license no more than ninety (90) days prior to the expiration date by submitting to the Division of Arkansas State Police:

(1) A renewal form prescribed by the division;

(2) A verified statement that the licensee remains qualified pursuant to the criteria specified in §§ 5-73-308(a) and 5-73-309;

(3) A renewal fee of twenty-five dollars ($25.00);

(4) A certification or training form properly completed by the licensee's training instructor reflecting that the licensee's training was conducted; and

(5) A digital photograph of the licensee or a release authorization to obtain a digital photograph of the licensee from another source.

(b) The license shall be renewed upon receipt of the completed renewal application, a digital photograph of the licensee, and appropriate payment of fees subject to a background investigation conducted pursuant to this subchapter that did not reveal any disqualifying offense or unresolved arrest that would disqualify a licensee under this subchapter.

(c) Additionally, a licensee who fails to file a renewal application on or before the expiration date shall renew his or her license by paying a late fee of fifteen dollars ($15.00).

(d)(1) No license shall be renewed six (6) months or more after its expiration date, and the license is deemed to be permanently expired.

(2)(A) A person whose license has been permanently expired may reapply for licensure.

(B) An application for licensure and fees pursuant to §§ 5-73-308(a), 5-73-309, and 5-73-311(a) shall be submitted, and a new background investigation shall be conducted.

(e) A new criminal background investigation shall be conducted when an applicant applies for renewal of a license. Costs for processing a new background check shall be paid by the applicant.

(f)(1) An active duty member of the United States Armed Forces, a member of the National Guard, or a member of a reserve component of the United States Armed Forces, who is on active duty outside this state may renew his or her license within thirty (30) days after the person returns to this state by submitting to the division:

(A) Proof of assignment outside of this state on the expiration date of the license; and

(B) The items listed in subdivisions (a)(1)-(5) of this section.

(2) Subsections (c) and (d) of this section shall not apply to a person who renews his or her license under subdivision (f)(1) of this section.

History. Acts 1995, No. 411, § 2; 1995, No. 419, § 2; 1997, No. 1239, §§ 6, 12; 1999, No. 487, § 2; 2003, No. 545, § 2; 2005, No. 881, § 1; 2007, No. 664, § 5; 2019, No. 61, § 2; 2019, No. 188, § 2.

Amendments. The 2019 amendments by identical Acts Nos. 61 and 188 substituted "twenty-five dollars ($25.00)" for "thirty-five dollars ($35.00)" in (a)(3).

5-73-314. Lost, destroyed, or duplicate license — Change of address.

(a) Within thirty (30) days after the changing of a permanent address, or within thirty (30) days after having a license to carry a concealed handgun lost, the licensee shall notify the Director of the Division of Arkansas State Police in writing of the change or loss.

(b) If a license to carry a concealed handgun is lost or destroyed, or a duplicate is requested, the person to whom the license to carry a concealed handgun was issued shall comply with the provisions of subsection (a) of this section and may obtain a duplicate license or replacement license upon:

(1) Paying the Division of Arkansas State Police a fee established by the director under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; and

(2) Furnishing a notarized statement to the division that the license to carry a concealed handgun has been lost or destroyed or that a duplicate is requested.

(c) The fee described in subdivision (b)(1) of this section shall be reduced by fifty percent (50%) if a person sixty-five (65) years of age or

older is requesting a replacement or duplicate license under this section.

History. Acts 1995, No. 411, § 2; 1995, No. 419, § 2; 2011, No. 758, § 3; 2013, No. 1271, § 2; 2015, No. 1155, § 15; 2019, No. 910, §§ 5748, 5749.

Amendments. The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a) and (b)(1); and substituted "division" for "department" in (b)(2).

5-73-317. Rules.

The Director of the Division of Arkansas State Police may promulgate rules to permit the efficient administration of this subchapter.

History. Acts 1995, No. 411, § 8; 1995, No. 419, § 8; 2019, No. 315, § 172; 2019, No. 910, § 5750.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "Rules" in the section heading; and deleted "and regulations" following "rules" in the text.

The 2019 amendment by No. 910 substituted "Division of Arkansas State Police" for "Department of Arkansas State Police".

5-73-319. Transfer of a license to Arkansas.

(a) Any person who becomes a resident of Arkansas who has a valid license to carry a concealed handgun issued by a reciprocal state may apply to transfer his or her license to Arkansas by submitting the following to the Division of Arkansas State Police:

(1) The person's current reciprocal state license;

(2) Two (2) properly completed fingerprint cards;

(3) A nonrefundable license fee of thirty-five dollars ($35.00);

(4) Any fee charged by a state or federal agency for a criminal history check; and

(5) A digital photograph of the person or a release authorization to obtain a digital photograph of the person from another source.

(b) After July 31, 2007, the newly transferred license is valid for a period of five (5) years from the date of issuance and binds the holder to all Arkansas laws and rules regarding the carrying of the concealed handgun.

History. Acts 2003, No. 545, § 3; 2007, No. 664, § 26; 2007, No. 1014, § 2; 2019, No. 315, § 173.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b).

5-73-320. License for certain members of the Arkansas National Guard or a reserve component or active duty military personnel.

(a) The Division of Arkansas State Police may issue a license under this subchapter to a person who:

(1) Is currently serving as an active duty member of, or has recently been honorably discharged from, the United States Armed Forces, the

National Guard, or a reserve component of the United States Armed Forces;

(2) Submits the following documents:

(A) A completed concealed handgun license application as prescribed by the division;

(B) A form specified by the Director of the Division of Arkansas State Police reflecting the fingerprints of the applicant;

(C) A properly completed and dated certificate from a concealed handgun carry training instructor who is registered with the division;

(D) A letter dated and personally signed by a commanding officer or his or her designee stating that the applicant is of good character and sound judgment;

(E) A form, as designated by the division, showing that the applicant has met the military qualification requirements for issuance and operation of a handgun within one (1) year of the application date;

(F) A copy of the face or photograph side of a current uniformed services of the United States identification card, if the applicant is a member of the United States Armed Forces; and

(G) An electronic passport-style photo of the applicant, if the applicant does not hold an Arkansas driver's license or identification card; and

(3) Submits any required fees.

(b) Except as otherwise specifically stated in this section, the license issued under this section is subject to the provisions of this subchapter and any rules promulgated under § 5-73-317.

History. Acts 2005, No. 1868, § 1; 2007, No. 664, § 7; 2007, No. 1014, § 3; 2013, No. 989, § 2; 2017, No. 1017, § 1; 2019, No. 910, § 5751.

Amendments. The 2017 amendment rewrote (a)(1); rewrote and redesignated former (a)(2)(D) as (a)(2)(D) and (E); and redesignated former (a)(2)(E) and (F) as (a)(2)(F) and (G).

The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in the introductory language of (a) and in (a)(2)(B); and substituted "division" for "department" in (a)(2)(A), (a)(2)(C), and (a)(2)(E).

5-73-322. Concealed handguns in a university, college, or community college building.

(a)(1) As used in this section, "public university, public college, or community college" means an institution that:

(A) Regularly receives budgetary support from the state government;

(B) Is part of the University of Arkansas or Arkansas State University systems; or

(C) Is required to report to the Arkansas Higher Education Coordinating Board.

(2) "Public university, public college, or community college" includes without limitation a public technical institute.

(3) "Public university, public college, or community college" does not include a private university or private college solely because:

(A) Students attending the private university or private college receive state-supported scholarships; or

(B) The private university or private college voluntarily reports to the board.

(b) A licensee who has completed the training required under subsection (g) of this section may possess a concealed handgun in the buildings and on the grounds of a public university, public college, or community college, whether owned or leased by the public university, public college, or community college, unless otherwise prohibited by this section or § 5-73-306.

(c)(1) A licensee may possess a concealed handgun in the buildings and on the grounds of a private university or private college unless otherwise prohibited by this section or § 5-73-306 if the private university or private college does not adopt a policy expressly disallowing the carrying of a concealed handgun in the buildings and on the grounds of the private university or private college.

(2)(A) A private university or private college that adopts a policy expressly disallowing the carrying of a concealed handgun in the buildings and on the grounds of the private university or private college shall post notices as described in § 5-73-306(18).

(B) A private university or private college that adopts a policy only allowing carrying of a concealed handgun under this section shall post notices as described in § 5-73-306(18) and subdivision (c)(2)(C) of this section.

(C) If a private university or private college permits carrying a concealed handgun under this section, the private university or private college may revise any sign or notice required to be posted under § 5-73-306(18) to indicate that carrying a concealed handgun under this section is permitted.

(d) The storage of a handgun in a university or college-operated student dormitory or residence hall is prohibited under § 5-73-119(c).

(e)(1) A licensee who may carry a concealed handgun in the buildings and on the grounds of a public university, public college, or community college under this section may not carry a concealed handgun into a location in which an official meeting lasting no more than nine (9) hours is being conducted in accordance with documented grievance and disciplinary procedures as established by the public university, public college, or community college if:

(A) At least twenty-four (24) hours' notice is given to participants of the official meeting;

(B) Notice is posted on the door of or each entryway into the location in which the official meeting is being conducted that possession of a concealed handgun by a licensee under this section is prohibited during the official meeting; and

(C) The area of a building prohibited under this subdivision (e)(1) is no larger than necessary to complete the grievance or disciplinary meeting.

(2) A person who knowingly violates subdivision (e)(1) of this section upon conviction is guilty of:

(A) A violation for a first offense and subject to a fine not exceeding one hundred dollars ($100); and

(B) A Class C misdemeanor for a second or subsequent offense.

(f) This section does not affect a licensee's ability to store a concealed handgun in his or her vehicle under § 5-73-306(13)(B)(v).

(g)(1) A licensee who intends to carry a concealed handgun in the buildings and on the grounds of a public university, public college, or community college is required to complete a training course approved by the Director of the Division of Arkansas State Police.

(2)(A) Training required under this subsection shall:

(i) Not be required to be renewed;

(ii) Consist of a course of up to eight (8) hours;

(iii) Be offered at the training instructor's option at concealed carry training courses; and

(iv) Cost no more than a nominal amount.

(B) The director may waive up to four (4) hours of the training required under this subsection for a licensee based on the licensee's prior training attended within ten (10) years of applying for the endorsement provided for under subdivision (g)(3) of this section on appropriate topics.

(3) A licensee who completes a training course under this subsection shall be given a concealed carry endorsement by the Division of Arkansas State Police on his or her license to carry a concealed handgun indicating that the person is permitted to possess and carry a concealed handgun in the buildings and on the grounds of a public university, public college, or community college.

(h) A licensee who completes a training course and obtains a concealed carry endorsement under subsection (g) of this section is exempted from the prohibitions and restrictions on:

(1) Carrying a firearm in a publicly owned building or facility under § 5-73-122, if the firearm is a concealed handgun; and

(2) Carrying a concealed handgun in a prohibited place listed under § 5-73-306(7)-(12), (14), (15), and (17), unless otherwise prohibited under § 5-73-306(19) or § 5-73-306(20).

(i) The division shall maintain a list of licensees who have successfully completed a training course under subsection (g) of this section.

(j)(1) Unless possession of a concealed handgun is a requirement of a licensee's job description, the possession of a concealed handgun under this section is a personal choice made by the licensee and not a requirement of the employing public university, public college, or community college.

(2) A licensee who possesses a concealed handgun in the buildings and on the grounds of a public university, public college, or community college at which the licensee is employed is not:

(A) Acting in the course of or scope of his or her employment when possessing or using a concealed handgun;

(B) Entitled to worker's compensation benefits for injuries arising from his or her own negligent acts in possessing or using a concealed handgun;

(C) Immune from personal liability with respect to possession or use of a concealed handgun; or

(D) Permitted to carry a concealed handgun openly or in any other manner in which the concealed handgun is visible to ordinary observation.

(3) A public university, public college, or community college is immune from a claim for monetary damages arising from or related to a licensee's use of, or failure to use, a concealed handgun if the licensee elects to possess a concealed handgun under this section.

History. Acts 2013, No. 226, § 5; 2015, No. 1155, § 16; 2017, No. 562, § 6; 2017, No. 859, §§ 7, 8; 2019, No. 910, §§ 5752-5755; 2020, No. 97, § 46.

Publisher's Notes. Acts 2017, No. 859, §§ 7, 8, specifically amended this section as amended by Acts 2017, No. 562.

Amendments. The 2017 amendment by No. 562 rewrote (a) through (c); and added (e) through (j).

The 2017 amendment by No. 859 substituted "a concealed carry endorsement" for "an endorsement" in the introductory language of (h); added "unless otherwise prohibited under § 5-73-306(19) or § 5-73-306(20)" in (h)(2); and, in (j)(3), deleted "the licensee is employed by the public university, public college, or community college against whom the claim is filed and" following "if" and substituted "a" for "the" following "possess".

The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (g)(1), (g)(2)(B), and (g)(3); and substituted "division" for "department" in (i).

The 2020 amendment rewrote (g)(2)(A)(iii); substituted "director" for "Director of the Division of Arkansas State Police" in (g)(2)(B); inserted "indicating" in (g)(3); and made a stylistic change.

Effective Dates. Acts 2017, No. 562, § 8: Sept. 1, 2017.

Acts 2017, No. 859, § 10: Sept. 1, 2017.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Amie Alexander & Sarah Giammo, Survey of Legislation 2017: Arkansas General Assembly, 40 U. Ark. Little Rock L. Rev. 305 (2017).

Hannah Webb Howard, Note: An Analysis of the Scope of Unlicensed Concealed Carry of a Firearm in Arkansas Pursuant to Arkansas Code Annotated Section 5-73-120 as Amended by Act 746 of 2013, 43 U. Ark. Little Rock L. Rev. 125 (2021).

5-73-324. Firearm rights shall not be infringed.

(a) A license to carry a concealed handgun issued under this subchapter shall not be denied, suspended, or revoked because a person was lawfully exercising his or her rights to carry a firearm under the United States Constitution, Amendment 2, the Arkansas Constitution, Article 2, § 5, or the Arkansas Code.

(b) The Division of Arkansas State Police shall not promulgate any rule and shall amend any existing rule that would result in a licensee having his or her license to carry a concealed handgun suspended or

revoked solely because he or she possessed a handgun and the possession was not in violation of any criminal offense or § 5-73-306.

History. Acts 2017, No. 486, § 1.

5-73-325. Firearm-sensitive areas — Security plan approval.

(a)(1) The following entities may submit a security plan to the Division of Arkansas State Police for approval that designates certain areas as a firearm-sensitive area where possession of a concealed handgun by a licensee under this subchapter is prohibited:

(A) The Arkansas State Hospital;

(B) The University of Arkansas for Medical Sciences; and

(C)(i) An institution of higher education that hosts or sponsors a collegiate athletic event.

(ii) A firearm-sensitive area under subdivision (a)(1)(C)(i) of this section is limited to an area where a collegiate athletic event is held.

(2) A security plan submitted under this section shall include the following information and corresponding security measures:

(A) Total projected attendance;

(B) Number of entrances and exits;

(C) Number of on-site private security personnel;

(D) Number of on-site law enforcement officers;

(E) Number of on-site first responders;

(F) Location of parking areas and number of motor vehicles projected to use the parking areas;

(G) Routes for emergency vehicles;

(H) Locations of all restrooms, stairs, and elevators;

(I) Evacuation procedures;

(J) Security communication protocol;

(K) Location of emergency vehicles;

(L) Public communication protocol; and

(M) Bomb threat and active shooter procedures.

(b) Security measures under this section shall include without limitation:

(1) Security personnel or law enforcement officers on-site;

(2) Use of a magnetometer or other metal-detecting device designed to detect a weapon;

(3) Barricades; or

(4) Other measures or devices designed to protect the public from a security threat.

(c)(1) An entity shall submit a security plan to the division under this section annually or no later than five (5) days before a scheduled collegiate athletic event.

(2) The division shall approve or disapprove a security plan for a scheduled collegiate athletic event within seventy-two (72) hours of the receipt of the security plan.

(3) Otherwise the division shall approve or disapprove a security plan within ten (10) business days.

(d) Upon approval of a security plan, an entity shall post a notification at all firearm-sensitive areas that possession of a concealed handgun is prohibited.

(e) A security plan submitted under this section is exempt from public disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 2017, No. 859, § 9.
Effective Dates. Acts 2017, No. 859, § 10: Sept. 1, 2017.

5-73-326. [Repealed.]

Publisher's Notes. This section, concerning licensee rights, private employer parking lot, was repealed by Acts 2021, No. 809, § 2, effective July 28, 2021. The section was derived from Acts 2017, No. 1071, § 3.

For current law, see § 11-5-117.

5-73-327. Discharged veterans.

(a) As used in this section:

(1) "Mental health institution or mental health treatment facility" means a public or private facility where a person may voluntarily admit himself or herself for mental health treatment; and

(2) "Veteran" means a person who:

(A) Served on active duty in the United States Armed Forces for a period of more than one hundred eighty (180) days and was discharged or released from active duty with other than a dishonorable discharge;

(B) Was discharged or released from active duty in the United States Armed Forces because of a service-connected disability; or

(C) As a member of a reserve component of the United States Armed Forces under an order to active duty, not to include training, was discharged or released from duty with other than a dishonorable discharge.

(b)(1) A veteran who voluntarily seeks and completes mental health treatment in a mental health institution or mental health treatment facility may obtain a license to carry a concealed handgun under this subchapter by filing a petition in the circuit court where the veteran resides.

(2) However, the veteran may not obtain a license to carry a concealed handgun under this subchapter until at least two (2) years after he or she completed mental health treatment in a mental health institution or mental health treatment facility.

(c)(1) A petition under this section shall request a judicial determination that the petitioner is mentally fit and that his or her past voluntary commitment to a mental institution or mental health treatment facility would currently not have a negative impact on the petitioner's ability to responsibly possess a license to carry a concealed handgun.

(2) A petitioner shall also provide the circuit court with a limited medical waiver that would allow the circuit court and the prosecuting attorney access to and the ability to request any medical record that concerns the petitioner's mental health treatment at issue.

(d)(1) A copy of a petition under this section shall be served on the prosecuting attorney within thirty (30) days of the filing of the petition.

(2) The prosecuting attorney may appear, support, object to, or present evidence relevant to the petition.

(e) The circuit court shall consider evidence in an open proceeding, including evidence offered by the petitioner concerning:

(1) The circumstances that led to the petitioner voluntarily seeking mental health treatment;

(2) The petitioner's certified mental health records;

(3) The petitioner's certified criminal history;

(4) The petitioner's reputation; and

(5) Changes in the petitioner's condition or circumstances relevant to the petition.

(f) The circuit court shall grant the petition if the circuit court finds by a preponderance of the evidence the following:

(1) The petitioner is not likely to act in a manner that is dangerous to public safety; and

(2) Granting the petition would not be contrary to the public interest.

(g) The petitioner may appeal a final order denying the petition and the review on appeal shall be de novo.

(h) A veteran may file a petition under this section no more than one (1) time every two (2) years.

(i) When the circuit court issues an order granting a petition under this section, as soon as practicable but no later than thirty (30) days after issuance of the order, the circuit clerk shall forward a copy of the order to the Division of Arkansas State Police.

History. Acts 2019, No. 917, § 2.

CHAPTER 74

GANGS

SUBCHAPTER.

1. Arkansas Criminal Gang, Organization, or Enterprise Act.

Subchapter 1 — Arkansas Criminal Gang, Organization, or Enterprise Act

SECTION.

5-74-107. Unlawful discharge of a firearm from a vehicle.

5-74-105. Unauthorized use of another person's property to facilitate certain crimes.

CASE NOTES

Evidence Sufficient.

Evidence was sufficient to sustain a conviction for unauthorized use of another person's property to facilitate a crime, where the State presented proof that defendant used another person's property to facilitate the delivery of methamphetamine, and substantial evidence supported the conviction for delivery of methamphetamine. Childers v. State, 2016 Ark. App. 371, 498 S.W.3d 742 (2016).

5-74-106. Simultaneous possession of drugs and firearms.

CASE NOTES

Analysis

Constructive Possession.
Defense.
Evidence.
Preservation for Review.

Constructive Possession.

Sufficient evidence supported defendant's conviction for simultaneous possession of drugs and a firearm because a jury could find defendant constructively possessed a gun found in a vehicle in which defendant was arrested, which defendant drove and solely occupied, as the gun was in plain view of an occupant of the driver's seat. Robinson v. State, 2017 Ark. App. 689, 537 S.W.3d 765 (2017).

Circuit court did not err in denying defendant's motion to dismiss the possession of methamphetamine and simultaneous possession of methamphetamine and a firearm charges where a deputy, while pursuing defendant, observed him throw a black object out of the window, the deputy discovered a bag of narcotics and a firearm in the location, and the deputy did not observe any other traffic in the area; thus, substantial circumstantial evidence supported defendant's constructive possession of the drugs and firearm. Terry v. State, 2018 Ark. App. 435, 559 S.W.3d 301 (2018).

State failed to prove that defendant constructively possessed the firearms that were found in the trailer house where defendant lived because the State did not show that the guns were in defendant's care, control, or management as defendant was found hiding under a couch in the living room, and the firearms were found in the bedroom, under a bed, within arm's reach of another individual hiding under the bed. There was no additional factor that allowed an inference that defendant had control or knowledge of the firearms. McCarley v. State, 2019 Ark. App. 222, 575 S.W.3d 603 (2019).

Defense.

Trial court did not abuse its discretion in refusing to give an affirmative-defense instruction under subsection (d) of this section where the testimony and evidence at trial left no fact question as to whether the multiple loaded firearms found in appellant's bedroom were readily accessible for use, and thus, there was no basis from which the jury could conclude that appellant did not have firearms readily accessible for his use. Cogburn v. State, 2016 Ark. App. 543 (2016).

Trial court did not abuse its discretion in refusing to submit an affirmative-defense jury instruction under subsection (d) of this section with respect to a charge of simultaneous possession of drugs and firearms. Because defendant was not inside his residence but was either in a detached garage or immediately outside the garage, there was no basis to conclude that defendant was in his home when the firearms were found. House v. State, 2020 Ark. App. 240, 600 S.W.3d 106 (2020).

Evidence.

There was no abuse of discretion in allowing a police officer to testify about the test-firing of the weapons seized from defendant because defendant knew about the weapons and could have conducted his

own tests, the prosecutor notified defendant's counsel of the test-fires, there were no written reports prepared, and the State did not intend to use the video of the testing when it was found to exist. Jones v. State, 2016 Ark. App. 354, 498 S.W.3d 309 (2016).

Preservation for Review.

Defendant did not preserve an appellate argument that his truck was his home on the road, permitting the defense under this section that defendant was in his home and his gun was not readily accessible; even if defendant sufficiently articulated the argument at the close of the State's case, defendant did not renew the argument at the close of all the evidence, as required by Ark. R. Crim. P. 33.1. Steen v. State, 2018 Ark. App. 156, 545 S.W.3d 789 (2018).

5-74-107. Unlawful discharge of a firearm from a vehicle.

(a)(1) A person commits unlawful discharge of a firearm from a vehicle in the first degree if he or she knowingly discharges a firearm from a vehicle and by the discharge of the firearm causes death or serious physical injury to another person.

(2) Unlawful discharge of a firearm from a vehicle in the first degree is a Class Y felony.

(b)(1) A person commits unlawful discharge of a firearm from a vehicle in the second degree if he or she recklessly discharges a firearm from a vehicle in a manner that creates a substantial risk of physical injury to another person or property damage to a home, residence, or other occupiable structure.

(2) Unlawful discharge of a firearm from a vehicle in the second degree is a Class B felony.

(c)(1)(A) Any vehicle or property used by the owner, or anyone acting with the knowledge and consent of the owner, to facilitate a violation of this section is subject to forfeiture.

(B) Subdivision (c)(1)(A) of this section is a new and independent ground for forfeiture.

(2)(A) Property that is forfeitable based on this section is forfeited pursuant to and in accordance with the procedures for forfeiture in § 5-64-505.

(B) The reference in subdivision (c)(2)(A) of this section to § 5-64-505 is procedural only, and it is not a defense to forfeiture under this section that the discharge of a firearm did not involve a controlled substance.

History. Acts 1993, No. 1002, § 1; 2017, No. 333, § 6.

Amendments. The 2017 amendment substituted "Unlawful discharge of a firearm from a vehicle in the first degree is" for "Any person who is guilty of unlawfully discharging a firearm from a vehicle in the first degree commits" in (a)(2); substituted "Unlawful discharge of a firearm from a vehicle in the second degree is" for "Any person who is guilty of unlawfully discharging a firearm from a vehicle in the second degree commits" in (b)(2); substituted "Subdivision (c)(1)(A) of this section" for "This" in (c)(1)(B); substituted "§ 5-64-505" for "§§ 5-64-505 and 5-64-509" in (c)(2)(A); and, in (c)(2)(B), substituted "in subdivision (c)(2)(A) of this section to § 5-64-505" for "to §§ 5-64-505 and 5-64-509" and "discharge of a firearm" for "shooting".

CASE NOTES

Analysis

Evidence Sufficient.
Gang Activity.
Lesser-Included Offenses.
Preservation for Review.

Evidence Sufficient.

There was testimony that the gun discharge occurred at a busy intersection, that other drivers were present at the time, and that several businesses were located nearby, and firing a gun into the air was reckless and created a substantial risk of physical injury and/or property damage; thus, there was substantial evidence to support defendant's unlawful-discharge conviction under this section. Oliver v. State, 2016 Ark. App. 332, 498 S.W.3d 320 (2016).

Evidence was sufficient to convict defendant of unlawful discharge of a firearm from a motor vehicle and battery as the victim suffered a serious physical injury. The victim testified that he received three gunshot wounds, was hospitalized, lost a kidney, and suffered further infections as a result of the wound; and the victim's injury caused protracted impairment of his health as the victim testified about the complications that resulted in infection and required him to return to the hospital, receive antibiotics, and have drainage tubes placed in his body. Johnson v. State, 2017 Ark. App. 71, 510 S.W.3d 298 (2017).

Circuit court properly sentenced defendant for capital murder, unlawful discharge of a firearm from a vehicle, terroristic act, and employing a firearm in the commission of a felony because nothing in the capital-murder statute required the State to prove anything regarding the weapon alleged to have been used, the evidence was sufficient for the jury to conclude that defendant shot at an occupiable structure (the victim's home) in an attempt to cause injury to the people standing in front of it, defendant was not prejudiced by the hearsay testimony of a detective regarding a witness's statements to him and the court's failure to give the limiting instruction, and the findings of guilt sufficiently triggered the sentence enhancement. Martinez v. State, 2019 Ark. 85, 569 S.W.3d 333 (2019).

Even assuming the witness was an accomplice, there was independent evidence tending to connect defendant with attempted capital murder, unlawful discharge of a firearm from a vehicle, and fleeing, as his letters and call to the witness were consistent with testimony that defendant was the shooter, and the jury could have found that defendant's alleged actions in firing the assault rifle at the officer and telling the driver to go aided and encouraged the driver in fleeing from the officer. Farmer v. State, 2019 Ark. App. 331, 580 S.W.3d 879 (2019).

Gang Activity.

Gang activity was not an element of the offense under this section, contrary to defendant's argument. Oliver v. State, 2016 Ark. App. 332, 498 S.W.3d 320 (2016).

Lesser-Included Offenses.

Trial court did not err in failing to instruct the jury on negligent homicide because it was not a lesser-included offense of unlawful discharge of a firearm from a vehicle, and defendant's proffered instruction did not meet any of the three alternative tests set out in § 5-1-110 where the culpable mental state for negligent homicide was directed at the act of causing the death of another person and the culpable mental state for first-degree unlawful discharge of a firearm from a vehicle was directed at the act of discharging the firearm. Webb v. State, 2019 Ark. App. 436, 587 S.W.3d 252 (2019).

Preservation for Review.

Although defendant argued that another person fired the shots from the vehicle, for purposes of his unlawful discharge of a firearm from a vehicle conviction, defendant did not raise this issue in his motion to dismiss, and although he did raise the issue in closing argument, that was not a substitute for a motion to dismiss; the issue was not preserved for review. Oliver v. State, 2016 Ark. App. 332, 498 S.W.3d 320 (2016).

5-74-108. Engaging in violent criminal group activity.

RESEARCH REFERENCES

ALR. Offense of Committing Murder In Aid of Racketeering (VICAR) in Drug Enterprise under 18 U.S.C. § 1959. 47 A.L.R. Fed. 3d Art. 5 (2020).

CHAPTER 75

OPERATION OF AIRCRAFT WHILE INTOXICATED

SECTION.
5-75-107. Blood alcohol testing devices.

5-75-107. Blood alcohol testing devices.

(a)(1) Any instrument used to determine the alcohol content of the breath of any person by analysis of the breath of the person for the purpose of determining if the person was operating or navigating any aircraft while intoxicated or with an alcohol concentration of four hundredths (0.04) or more shall be so constructed that the analysis is made automatically when a sample of the person's breath is placed in the instrument and without any adjustment or other action of the person administering the analysis.

(2) The instrument shall be so constructed that the breath alcohol content is shown by visible digital display on the instrument and on an automatic readout.

(b) Any breath analysis made by or through the use of a machine or instrument that does not conform to the requirements prescribed in this section is inadmissible in any criminal or civil proceeding.

(c)(1) The State Board of Health may adopt appropriate rules to carry out the intent and purposes of this section, and only an instrument approved by the board as meeting the requirements of this section and the rules of the board shall be used for making a breath analysis for determining breath alcohol concentration.

(2)(A) The Department of Health specifically may limit by its rules the types or models of testing devices that may be approved for use in Arkansas for the purposes set forth in this section.

(B) The approved types or models shall be specified by manufacturer's name and model.

History. Acts 1993, No. 824, § 7; 2001, No. 561, §§ 23, 24; 2019, No. 315, § 174.

Amendments. The 2019 amendment, in (c)(1), deleted "and regulations" following "rules" and substituted "rules of the board" for "regulations of the board".

CHAPTER 77

OFFICIAL INSIGNIA

SUBCHAPTER.
2. Emergency Lights and Law Enforcement Insignia Sales.

Subchapter 2 — Emergency Lights and Law Enforcement Insignia Sales

SECTION.
5-77-201. Unlawful possession, purchase, sale, or transfer of a blue light or blue lens cap.
5-77-202. Law enforcement insignia sales.
5-77-203. Rules.
5-77-205. Resale of law enforcement vehicles.

5-77-201. Unlawful possession, purchase, sale, or transfer of a blue light or blue lens cap.

(a) It is unlawful for a person to:

(1) Knowingly possess or purchase a blue light or blue lens cap with a purpose to unlawfully use the blue light or blue lens cap; or

(2) Transfer a blue light or blue lens cap to another person whom the actor knows or should know has a purpose to unlawfully use the blue light or blue lens cap.

(b) Before selling a blue light or blue lens cap, the seller shall require the buyer to provide identification that legally demonstrates that the buyer is a law enforcement officer, auxiliary law enforcement officer, or a county coroner.

(c) Any sale of a blue light or blue lens cap shall be reported to the Division of Arkansas State Police on a form prescribed by the division.

(d) Upon conviction, a person who violates this section is guilty of a Class C felony.

(e) As used in this section:

(1) "Auxiliary law enforcement officer" means the same as defined in § 12-9-301;

(2) "Blue lens cap" means a lens cap designed to produce a blue color of light when light from a device designed for an emergency vehicle passes through the lens cap; and

(3) "Blue light" means any operable device that:

(A) Emits a blue color of light;

(B) Is designed for use by an emergency vehicle or is similar in appearance to a device designed for use by an emergency vehicle; and

(C) Can be operated by use of the vehicle's battery, the vehicle's electrical system, or a dry cell battery.

(4) [Repealed.]

(f) This section does not apply to the following persons if acting with a lawful purpose:

(1) An in-state or out-of-state law enforcement officer or auxiliary law enforcement officer;

(2) A county coroner;

(3) A person employed by an in-state or out-of-state or federal agency who is operating a vehicle equipped with a blue light or blue lens cap during the course and scope of his or her employment; or

(4) A legitimate seller or vendor of blue lights or blue lens caps.

History. Acts 1997, No. 1281, § 1; 2007, No. 827, § 110; 2017, No. 439, § 1; 2019, No. 380, § 3.

Amendments. The 2017 amendment rewrote the section heading; rewrote (a); inserted "auxiliary law enforcement officer" in (b); substituted "Class C" for "Class D" in (d); added (e)(1); redesignated former (e)(1) and (2) as (e)(2) and (3); added (e)(4); and added (f).

The 2019 amendment repealed (e)(4).

5-77-202. Law enforcement insignia sales.

(a)(1) It is unlawful to sell official law enforcement insignia to any person other than a law enforcement officer.

(2) It is unlawful for a person other than a law enforcement officer to buy official law enforcement insignia.

(b) Before selling official law enforcement insignia, the seller shall require the buyer to provide identification that legally demonstrates that the buyer is currently employed as a law enforcement officer or is currently an appointed auxiliary law enforcement officer.

(c) A violation of this section is a Class D felony.

(d) As used in this section:

(1) "Auxiliary law enforcement officer" means the same as defined in § 12-9-301; and

(2) "Official law enforcement insignia" means those items relating to the performance of a person's duty as a law enforcement officer when the items are formally sanctioned by the law enforcement agency employing the person.

History. Acts 1997, No. 1281, § 2; 2017, No. 439, § 2.

Amendments. The 2017 amendment, in (b), inserted "currently employed as" and added "or is currently an appointed auxiliary law enforcement officer"; substituted "Class D felony" for "Class A misdemeanor" in (c); redesignated former (d) as the introductory language of (d) and (d)(2); and added (d)(1).

5-77-203. Rules.

The Division of Arkansas State Police shall promulgate rules to implement this subchapter, including rules that define the type of identification necessary to legally demonstrate that a person is a law enforcement officer or a county coroner.

History. Acts 1997, No. 1281, § 3; 2019, No. 315, § 175.

Amendments. The 2019 amendment substituted "Rules" for "Regulations" in the section heading; and substituted "rules" for "regulations" twice in the text.

5-77-205. Resale of law enforcement vehicles.

(a) Except as provided in subsection (b) of this section, before a law enforcement vehicle is offered for sale to the public, the seller of the law enforcement vehicle shall remove from the law enforcement vehicle the:

(1) Lightbar, including any blue lights or blue lens cap;

(2) Spotlight;

(3) Siren;

(4) Law enforcement decals and signage;

(5) Radios; and

(6) Other items associated solely with law enforcement vehicles.

(b) The items required to be removed under subdivisions (a)(1)-(6) of this section are not required to be removed if the law enforcement vehicle is sold to a law enforcement agency.

(c) A violation of subsection (a) of this section is a violation and punishable by a fine of not more than one thousand dollars ($1,000).

History. Acts 2009, No. 792, § 1; 2017, No. 439, § 3.

Amendments. The 2017 amendment added "including any blue lights or blue lens cap" in (a)(1).

CHAPTER 78

TOBACCO

SECTION.

5-78-102. Possession of cigarette or tobacco product, vapor product, alternative nicotine product, or e-liquid product by minor — Confiscation — Additional punishment.

Effective Dates. Acts 2019, No. 580, § 18: Sept. 1, 2019. Effective date clause provided: "Sections 2-17 of this act are effective on the first day of the second calendar month following the effective date of this act."

5-78-102. Possession of cigarette or tobacco product, vapor product, alternative nicotine product, or e-liquid product by minor — Confiscation — Additional punishment.

(a)(1) As used in this section, "minor" means a person who is under twenty-one (21) years of age.

(2) "Minor" does not include a person who:

(A) Is under twenty-one (21) years of age if the person presents a military identification card establishing that he or she is a member of the United States Armed Forces; or

(B) Has attained nineteen (19) years of age as of December 31, 2019.

(b) A cigarette or tobacco product, vapor product, alternative nicotine product, or e-liquid product found in the possession of a minor may be confiscated by a certified law enforcement officer or a school official and immediately destroyed.

(c) If a minor who is found by a court to be in violation of a criminal statute is also found to have been in possession of a cigarette or tobacco product, vapor product, alternative nicotine product, or e-liquid product at the time of the violation of the criminal statute, the court may order the minor to perform up to three (3) hours of community service and to enroll

in a tobacco education program, in addition to any other punishment imposed by the court for the violation of the criminal statute.

(d)(1) Any additional punishment ordered by the court under subsection (c) of this section is not a criminal offense and shall not be recorded as a criminal offense in the records of this state.

(2) All records of a proceeding under this section shall be permanently expunged from any record created or maintained by any agency, department, county, or municipality.

History. Acts 1999, No. 1331, § 2; 2011, No. 868, § 2; 2013, No. 1125, § 20; 2019, No. 580, § 4.

Amendments. The 2019 amendment, in the section heading, inserted "vapor product, alternative nicotine product, or e-liquid product" following "product" and added "Definition"; redesignated former (a) as (b) and redesignated the remaining subsections accordingly; added (a); in (b), inserted "vapor product, alternative nicotine product, or e-liquid product" and substituted "possession of a minor" for "possession of a person under eighteen (18) years of age"; inserted "vapor product, alternative nicotine product, or e-liquid product" in (c); updated an internal reference; and made stylistic changes.

Effective Dates. Acts 2019, No. 580, § 18: Sept. 1, 2019. Effective date clause provided: "Sections 2-17 of this act are effective on the first day of the second calendar month following the effective date of this act."

CHAPTER 79

BODY ARMOR

SECTION.

5-79-101. Criminal possession of body armor.

5-79-101. Criminal possession of body armor.

(a) A person commits criminal possession of body armor if the person knowingly possesses body armor and he or she:

(1) Has been found guilty of or has pleaded guilty or nolo contendere to any of the following offenses:

(A) Capital murder, § 5-10-101;

(B) Murder in the first degree, § 5-10-102;

(C) Murder in the second degree, § 5-10-103;

(D) Manslaughter, § 5-10-104;

(E) Aggravated robbery, § 5-12-103;

(F) Battery in the first degree, § 5-13-201;

(G) Aggravated assault, § 5-13-204;

(H) A felony violation of § 5-64-401 et seq.; or

(I) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; or

(2) Is committing or attempts to commit:

(A) A felony involving violence as defined in § 5-4-501(d)(2);

(B) Capital murder, § 5-10-101, manslaughter, § 5-10-104, or negligent homicide, § 5-10-105;

(C) False imprisonment in the first degree, § 5-11-103, false imprisonment in the second degree, § 5-11-104, vehicular piracy, § 5-11-105, or permanent detention or restraint, § 5-11-106;

(D) Robbery, § 5-12-102;

(E) Battery in the second degree, § 5-13-202; or

(F) Trafficking of persons, § 5-18-103.

(b) As used in this section, "body armor" means any material designed to be worn on the body and to provide bullet penetration resistance.

(c) Criminal possession of body armor is a Class D felony.

History. Acts 1999, No. 1449, § 1; 2005, No. 1994, § 299; 2013, No. 542, § 1; 2017, No. 367, § 6.

Amendments. The 2017 amendment added (a)(1)(I).